THE MADRAS LAW JOURNAL

IN THE SUPREME COURT OF INDIA.

Present:- *T.K.Thommen* and *R.M.Sahai, JJ.*

C.A.No.3698 of 1991 *20th September, 1991.*

Byram Pestonji Gariwala ...*Appellant*
v.
Union Bank of India and others ...*Respondents.*

Civil Procedure Code (V of 1908), O.23, Rule 3 (as amended by Act CIV of 1976) - Words 'in writing and signed by the parties' - Whether exclude counsel from signing the compromise - Counsel whether competent to sign the compromise - Counsel, if can act upon implied authority - Compromise decree whether creates estoppel.

There is no reason to assume that the Legislature intended to curtail the implied authority of counsel, engaged in the thick of proceedings in Court to compromise or agree on matters relating to the parties even if such matters exceed the subject matter of the suit. The relationship of counsel and his party or the recognised agent and his principal is a matter of contract; and with the freedom of contract generally, the legislature does not interfere except when warranted by public policy and the legislative intent is expressly made manifest. So long as the system of judicial administration in India continues unaltered and so long as Parliament has not evinced an intention to change its basic character, there is no reason to assume that Parliament has, though not expressly; but impliedly reduced counsel's role or capacity to represent his client as effectively as in the past. On a matter of such vital importance, it is most unlikely that Parliament would have resorted to implied legislative alteration of counsel's capacity or status or effectiveness. The Court may, however, hasten to add that it will be prudent for counsel not to act on implied authority except when warranted by the exigency of circumstances demanding immediate adjustment of suit by agreement or compromise and the signature of the party cannot be obtained without undue delay. In these days of easier and quicker communication, such contingency may seldom arise. A wise and careful counsel will no doubt arm himself in advance with the necessary authority expressed in writing to meet all such contingencies in order that neither his authority nor integrity is ever doubted. This essential precaution will safeguard the personal reputation of counsel as well as uphold the prestige and dignity of the legal profession. Considering the traditionally recognised role of counsel in the common law system and the evil sought to be remedied by Parliament by the C.P.C. (Amendment) Act, 1976, namely attainment of certainty and expedious disposal of cases by reducing the terms of compromise to writing signed by the parties allowing the compromise decree to comprehend even, matters falling outside the subject-matter of the suit but relating to the parties, the legislature cannot, in the absence of express words to such effect, be presumed to have disallowed the parties to enter into a compromise by counsel in their cause or by their duly authorised agents. Any such presumption would be inconsistent with the legislative object of attaining quick reduction of arrears in court by elimination of uncertainties and enlargement of the scope of compromise. To insist upon the party himself personally signing the agreement or compromise would often cause undue delay, loss and inconvenience especially in the case of non-resident persons. It has always been universally understood that a party can always act by his duly authorised representative. If a power-of-attorney holder can enter into an agreement or compromise on behalf of his principal, so can counsel, possessed of the requisite authorisation by vakalatnama, act on behalf of his client. Not to recognise such capacity is not only to cause much inconvenience and loss to the parties personally but also to delay the progress of proceedings in court. If the legislature had intended to make such a fundamental change,

even at the risk of delay, inconvenience and needless expenditure, it would have expressly so stated. Accordingly, it must be held that the words 'in writing and signed by the parties' inserted by the C.P.C. (Amendment) Act, 1976 must necessarily mean, to borrow the language of O.3, Rule 1, C.P.C.' any appearance, application or act in or to any court required or authorised by law to be made or done by a party in such court, may except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognised agent or by a pleader, appearing or acting as the case may be, on his behalf: Provided that any such appearance shall, if the Court so directs, be made by the party in person. A judgment by consent is intended to stop litigation between the parties just as much as a judgment resulting from a decision of the Court at the end of a long drawn out fight. A compromise decree creates an estoppel by judgment.

[Paras 30, 35, 37, 38, 39, 40 and 43]

Cases referred to:

Patience Swinfen v. Lord Chelmsford, (1860)5 H.& N. 890: 29 L.J. (Ex.) 382; Matthews v. Munster, (1887)20 Q.B. 141: 57 L.J. Q.B. 49; Rondel v. Worsley, (1967)1 A.B. 443: (1966)1 All.E.R. 467; (Babu) Sheonandan Prasad Singh v. Hakim Abdul Fateh Mohammed Reza, A.I.R. 1935 P.C. 119: 62 I.A. 196: 156 I.C. 694: 37 Bom.L.R. 845; Sourendra Nath Mitra v. Tarubala Dasi, A.I.R. 1930 P.C. 158: 68 M.L.J. 651: 57 I.A. 133: 32 Bom.L.R. 645; Neale v. Gordon Lennox (Lady) 1902 A.C. 465; Shepherd v. Robinson, (1919)1 K.B. 474: 88 L.J.K.B. 873; Hemanta Kumari Debi v. Midnapur Zamindari Company Limited, A.I.R. 1919 P.C. 79: 46 I.A. 240: 22 Bom.L.R. 448; Ram Juwan v. Devendra Nath Gupta, A.I.R. 1960 M.P. 280: 1960 Jab.L.J. 269: 1960 M.P.L.J. 642; Vishnu Sitaram Auchat v. Ramchandra Govind Joshi, A.I.R. 1932 Bom. 466: 34 B.L.R. 849: 139 I.C. 830; Jasimuddin Biswas v. Bhuban Jelini, I.L.R. 34 Cal. 456; Ganganand Singh v. Rameshwar Singh Bahadur A.I.R. 1927 Pat 271: 102 I.C. 449; Chengan Souri Nayakam v. A.N.Menon, A.I.R. 1968 Ker. 213: 1968 K.L.T. 1: 1968 Ker.L.J. 62 (F.B.) Jiwibai v. Ram Kumar Shrinivas Murura Agarwala, A.I.R. 1947 Nag. 17: 1947 N.L.J. 1: 229 I.C. 402 (F.B.); Govindammal v Marimuthu Maistry, (1958)2 M.L.J. 34: A.I.R. 1959 Mad. 7 Laxmidas Ranchhoddas v Savitabai Hargovindas Shah, A.I.R. 1956 Bom. 54: 57 Bom.L.R. 988: I.L.R. 1955 Bom. 955; Jamilabai Abdul Kadar v. Shankarlal Gulabchand, A.I.R. 1975 S.C. 2202: (1975)2 S.C.C. 609: 1975 S.C.R. (Supp.) 336; Manoharbahal Collery Calcutta v. K.N.Mishra, A.I.R. 1975 S.C. 1632: 1975 Lab.I.C. 1082: (1975)2 S.C.C. 244; National Assistance Board v. Wilkinson, (1952)2 Q.B. 648: (1952)2 All.E.R. 255; Mohan Bai v. Jai Kishan, A.I.R. 1983 Raj. 240: 1983 Raj. LR. 365: 1983 Raj.L.W. 289; Mohan Bai v. Smt. Jai Kishan, A.I.R. 1988 Raj. 22; Nadirsha Hirji Baria v. Niranjankumar @. Nireshkumar Dharamchand Shah, (1983)1 G.L.R. 774; Kesarla Raghuram v. Dr.Narasipalle Vasundara, A.I.R. 1983 A.P. 32: 1982 Hind. L.R. 609: (1983)1 Ren. L.R. 144; Shankar Sitaram Sontakke v. Balkrishna Sitaram Sontakke, A.I.R. 1954 S.C. 352: (1955)1 S.C.R. 9; Sailendra Narayan v. Bhanja Deo v. State of Orissa, A.I.R. 1956 S.C. 346: 1956 S.C.R. 72; Mohanlal Goenka v. Benoy Kishna Mukherjee, A.I.R. 1953 S.C. 65: 1953 S.C.R. 377.

Arun Jaitey, Senior Advocate (*R.F.Nariman, R.Karanjawala, Ms.M.Karanjawala, Ms.Nandini Gore* and *Ms.Aditi Choudhary,* Advocates with him), for Appellant.

V.A.Bobde, Senior Advocate (*U.A.Rao* and *B.R.Agarwala,* Advocates with him), for Respondents.

The Judgment of the Court was delivered by

Thommen, J.:- Leave granted.

2. The appellant who is the defendant is Suit No.309 of 1972 challenges the judgment of the Bombay High Court in Chamber Summons No.838 of 1990 in Execution Application No.242 of 1989 whereby the High Court held that the decree made against the defendant in terms of a compromise in writing and signed by counsel representing the parties, but not signed by the parties in person, was valid and binding on the parties, and in the absence of any challenge against the order made under O.XXI, Rule 23, C.P.C. allowing execution of the decree, the defendant was no longer entitled to resist execution by recourse to chamber summons. The High Court found that the decree was valid and in accordance with the provisions of O.23, Rule 3, as amended by the C.P.C. (Amendment) Act, 1976.

3. The only question which arises for consideration is as regards the construction of O.23, Rule 3, C.P.C. We shall read this provision, as amended by the C.P.C. (Amendment) Act, 1976, bracketing the newly added words:

"O.23, Rule 3. *Compromise of suit:-* Where it is

proved to the satisfaction of the court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, [in writing and signed by the parties] or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject matter of the suit, the court shall order such agreement. compromise or satisfaction to be recorded. and shall pass a decree in accordance therewith [so far as it relates to the parties to the suit. whether or not the subject matter of the agreement, compromise or satisfaction is the same as the subject matter of the suit:]

[Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction had been arrived at, the court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the court, for reasons to be recorded, thinks fit to grant such adjournment.]

[*Explanation*:- An agreement or compromise which is void or voidable under the Indian Contract Act, 1872, shall not be deemed to be lawful within the meaning of this rule.]"

4. Mr.Arun Jaitley, appearing for the appellant, says that the High Court was wrong in holding that, notwithstanding the amendment of 1976 inserting the words 'in writing and signed by the parties', it was still sufficient if the terms of compromise were reduced to writing and signed by counsel representing the parties, and not necessarily by the parties in person. Any such construction would do violence to the provision as amended in 1976. He says that the object of the amendment was to provide that no agreement or compromise adjusting wholly or in part a pending suit was valid unless such compromise was evidenced in writing and signed by the parties in person. The expression 'parties', he contends, means only parties and none else. To read 'counsel' into that expression, as done by the High Court, is to presume that the legislature failed to say what it intended to say and to attempt to supply the omission by correcting the deficiency. This cannot be done. The legislature, on the other hand, made its intention explicit by providing that an agreement or compromise would form the basis of a decree only if the consensus was reduced to writing and signed by the parties. Neither an agent nor a pleader could act as a substitute for a party to sign the agreement or compromise. A decree based on a compromise not signed by the parties in person is a nullity and is incapable of execution.

5. Mr.Jaitley submits that if the legislature had intended to authorise counsel independently to sign the memorandum containing the terms of settlement, and allow a decree to be passed in terms thereof, the legislature would have said so by further adding the words 'or their counsel'. In the absence of any such expression, it cannot be presumed that the legislature intended more than what it said and that 'party' included counsel. This argument, Mr.Jaitley says, is fortified by the fact that for the first time the legislature has allowed a decree to be passed on the basis of compromise relating to matters concerning the parties, but extending beyond the subject matter of the suit. Such a wide power to compromise was most unlikely to be left in the hands of counsel, and it is, therefore, necessary to read the provision narrowly so as to read it as it now stands by adopting a strictly literal construction.

6. Mr.V.A.Bobde appearing for the respondents, on the other hand, submits that it was always understood that the expression 'party' included his pleader in matters relating to appearance in court, and his counsel in the cause, therefore, has express or implied authority, unless specifically withdrawn or limited by the party, to represent him in court and do whatever is necessary in connection with the conduct of his suit including adjustment of the suit by agreement or compromise. In the absence of any such limitation or restriction of his authority, counsel appearing for a party is fully competent to put his signature to the terms of any compromise upon which a decree can be passed in proper compliance with the provisions of O.23, Rule 3 as it now stands. Any such decree, he says, is perfectly valid.

7. Mr.Bobde submits that in the absence of express words to the contrary, 'party', in the context of proceedings in court, must necessarily include his recognised agent or pleader. This construction is warranted by the provisions of O.3, C.P.C. That this has been the consistent view adopted by courts in the construction of the expression 'party' in the context of proceedings in court is clear from the decisions of courts, and it is most unlikely that the legislature would have, by the amendment of 1976, limited the scope of 'party' so as to exclude the traditional role of the recognised agent or

counsel. The legislative draftsmen are presumed to know the law of the land as it stood then, and, if they had intended to deviate therefrom, they would have explicitly stated so rather than leave it to future judicial construction. The Statement of Objects and Reasons for the amendment, he says, does not support the view canvassed by the appellant.

8. Sub-clause (iii) of clause 77 of the Statement of Objects and Reasons concerning the C.P.C. (Amendment) Act, 1976 states;

> "it is provided that an agreement or compromise under Rule 3 should be in writing and signed by the parties. This is with a view to avoiding the setting up of oral agreements or compromises to delay the progress of the suit.
>
> * * *
>
> In view of the words 'so far as it relates to the suit' in Rule 3, a question arises whether a decree which refers to the terms of a compromise in respect of matters beyond the scope of the suit is executable or whether the terms of the decree relating to the matters outside the suit can be enforced only by a separate suit. The amendment seeks to clarify the position."

The Statement of Objects and Reasons indicates that the amendment is intended to clarify that a compromise has to be in writing signed by the parties to avoid delay which might arise from the uncertainties of oral agreements. The amendment has also clarified that the terms of compromise are permitted to include all matters relating to the parties to the suit even if such matters fall outside the subject matter of the suit. The legislature has thus sought to attain certainty and clarity and widen the scope of compromise. The fundamental question is, in the absence of any contrary indication in the Statement of Objects and Reasons, can it be stated that the legislature has intended to exclude a pleader or a recognised agent from the expression 'party' when it has always been understood, as explicitly stated in O.3 Rule 1, that appearance of a party in court may be in person or by his recognised agent or pleader. In the absence of any provision to the contrary, can it be stated that the legislature, when using the expression 'parties' in Rule 3 of O.23, limited it to parties in person and excluded their duly recognised agents or counsel?

9. The role of counsel in court in England is described in *Halsbury's Laws of England, (4th edn. vol.3, para 1181)* as follows:

> "1181. *Counsel's authority:* At the trial of an action, counsel's authority extends, when it is not expressly limited, to the action and all matters incidental to it and to the conduct of the trial, such as withdrawing the record, challenging a juror, calling or not calling witnesses, cross-examining or not cross-examining witnesses, consenting to a reference to arbitration, a compromise, or a verdict, undertaking to appear, or, on the hearing of a motion for a new trial, consenting to a reduction of damages.
>
> The client's consent is not needed for a matter which is within the ordinary authority of counsel: thus if, in court, in the absence of the client, a compromise or settlement is entered into by counsel whose authority has not been expressly limited, the client is bound. If an action is settled in court in the presence of the client, his consent will be inferred, and he will not be heard to say that he did not understand what was going on......"

10. The implied authority of counsel in England is, however, confined to matters falling within the subject matter of the suit. In the absence of express authority, counsel cannot enter into compromise on collateral matters: *Halsbury's Laws of England, (4th edn. vol.3, para 1181)*

> "The authority of counsel to compromise is limited to the issues in the action: a compromise by counsel affecting collateral matters will not bind the client, unless he expressly assents; and it may be that a barrister has no authority to reach a binding settlement or compromise out of Court."

11. A compromise is, however, not binding and is liable to be set aside in circumstances which would invalidate agreements between the parties: *Halsbury, id., para 1183,*

> "A compromise by counsel will not bind the client, if counsel is not apprised of facts the knowledge of which is essential in reference to the question on which he has to exercise his discretion, for example that the terms accepted had already been rejected by the client. Where counsel enters into a compromise in intended pursuance of terms agreed upon between the clients, and, owing to a misunderstanding, the compromise fails to carry out the intentions of one side, the compromise does not bind the

client, and the court will allow the consent to be withdrawn Where, acting upon instructions to compromise, counsel consents under a misunderstanding to certain terms which do not carry into effect the intentions of counsel and the terms are thought by one party to be more extensive than the other party intends them to be, there is no agreement on the subject-matter of the compromise, and the court will set it aside. But a person who has consented to a compromise will not be allowed to withdraw his consent because he subsequently discovers that he has a good ground of defence."

12. Counsel's consent in certain circumstances such as duress or mistake may not bind the client: *Halsbury, ibid.*

"If counsel's consent is given under duress, the client will not be bound, as when counsel, acting for a client alleged to be of unsound mind but believing him to be of sound mind, consented to certain terms for the withdrawal of Court of Protection proceedings against the client because of his fear of the inconvenience and ill-health likely to arise to the client from confinement.

A compromise or order made by consent by counsel for a minor or other person under disability is not binding on the client, unless it is sanctioned by the court as being for the benefit of the client. The court cannot, however, enforce a compromise on a minor against the opinion of his counsel."

13. One of the early English authorities on this point is *Patience Swinfen v. Lord Chelmsford, (1860)5 H.& N. 890, 922: S.C. 29 L.J. (Ex.) 382.* Delivering the judgment of the Court, Pollock, C.B., stated:

"......We are of opinion, that although a counsel has complete authority over the suit, the mode of conducting it, and all that is incident to it-such as withdrawing the record, withdrawing a juror, calling no witnesses, or selecting such as, in his discretion, he thinks ought to be called, and other matters which properly belong to the suit and the management and conduct of the trial-we think he has not, by virtue of his retainer in the suit, any power over matters that are collateral to it..."

14. In *Matthews v Munster, (1887)20 Q.B. 144: 57 L.J. Q.B. 49,* Lord Esher M.R. stated: (Q.B. p.144)

"....... The instances that are given show that one of the things that counsel may do, so long as the request of the client to him to act as advocate is in force, is to assent to a verdict for a particular amount and upon certain conditions and terms; and the consent of the advocate to a verdict against his client and the withdrawing of imputations is a matter within the expression 'conduct of the cause and all that is incidental to it'. If the client is in court and desires that the case should go on and counsel refuses, if after that he does not withdraw his authority to counsel to act for him, and acquaint the other side with this, he must be taken to have agreed to the course proposed. This case is a still stronger one, for the client was not present, and it is not pretended that he ever withdrew his authority to counsel, but he now comes forward and asks that because he does not like what has been done it should be set aside as between himself and his opponent. This the Court will not do, and this appeal must be dismissed."

See also *Rondel v. Worsley, (1967)1 Q.B. 443, 502: (1966)1 All.E.R. 467;* per Lord Denning M.R.

15. If this is the position of counsel in England, Scotland and Ireland, is his position the same in India in the conduct of cases in court? That the answer is affirmative, there is high judicial authority.

16. In *(Babu) Sheonandan Prasad Singh v. Hakim Abdul Fateh Mohammed Reza, A.I.R. 1935 P.C. 119, 121: 62 I.A. 196: 156 I.C. 694: 37 Bom.L.R. 845,* Lord Atkin, speaking for the Board, states: (A.I.R. p.121)

"........As was laid down by this Board in *Sourendra Nath Mitra v. Tarubala Dasi, A.I.R. 1930 P.C. 158: 68 M.L.J. 651: 57 I.A. 133: 32 Bom.L.R. 645,* counsel in India have the same implied authority to compromise an action as have counsel in the English courts. But if such authority is invoked to support an agreement of compromise the circumstances must be carefully examined. In the first instance the authority is an actual authority implied from the employment as counsel. It may however be withdrawn or limited by the client: in such a case the actual authority is destroyed or restricted; and the other party if in ignorance of the limitation could only rely upon ostensible authority. In this particular class of

contract however the possibility of successfully alleging ostensible authority has been much restricted by the authorities as *Neale v. Gordon Lennox (Lady), 1902 A.C. 465* and *Shepherd v. Robinson, (1919)1 K.B. 474: 88 L.J. K.B. 873,* which make it plain that if in fact counsel has had his authority withdrawn or restricted the courts will not feel bound to enforce a compromise made by him contrary to the restriction even though the lack of actual authority is not known to the other party."

17. Lord Atkin emphasises the need to rely on express authority, rather than implied authority, particularly because of easier and quicker communication with the client. He says: [A.I.R. p.121]

> "......In their Lordships' experience both in this country and in India it constantly happens, indeed it may be said that it more often happens, that counsel do not take upon themselves to compromise a case without receiving express authority from their clients for the particular terms; and that this position in each particular case is mutually known between the parties.

In such cases the parties are relying not on implied but on an express authority given ad hoc by the client."

18. However, collateral matters were understood to be beyond the scope of compromise. Lord Atkin said: *[A.I.R. p.122]*

> "If the facts are as their Lordships assume, the matter compromised was in their opinion collateral to the suit and not only would it not be binding on the parties, but it would in any case be a matter in respect of which the court in pursuance of O.23, Rule 3, should not make a decree."

19. Referring to the role of counsel in India and comparing him with his counterpart in Britain, Lord Atkin in *Sourendra Nath Mitra v. Tarubala Dasi, A.I.R. 1930 P.C. 158: 68 M.L.J. 651: 57 I.A. 133: 32 Bom.L.R. 645,* says: *[A.I.R. p.161]*

> "...... Their Lordships regard the power to compromise a suit as inherent in the position of an advocate in India. The considerations which have led to this implied power being established in the advocates of England, Scotland and Ireland, apply in equal measure to India. It is a power deemed to exist because its existence is necessary to effectuate the relations between advocate and client, to make possible the duties imposed upon the advocate by his acceptance of the cause of his client."

20. Counsel's power to compromise is vital to the defence of his party while engaged on his behalf in the thick of a legal battle in court. Lord Atkin observes *Sourendra Nath Mitra v. Tarubala Dasi, A.I.R. 1930 P.C. 158: 68 M.L.J. 651: 57 I.A. 133: 32 Bom.L.R. 645: [A.I.R. p.161].*

> "The advocate is to conduct the cause of his client to the utmost of his skill and understanding. He must in the interests of his client be in the position, hour by hour, almost minute by minute, to advance this argument, to withdraw that; he must make the final decision whether evidence is to be given or not on any question of fact; skill in advocacy is largely the result of discrimination. These powers in themselves almost amount to powers of compromise: one point is given up that another may prevail. But in addition to these duties, there is from time to time thrown upon the advocate, the responsible task of deciding whether in the course of a case he shall accept an offer made to him, or on his part shall make an offer on his client's behalf to receive or pay something less than the full claim or the full possible liability. Often the decision must be made at once."

21. Emphasising the apparent authority of counsel, and the *raison d'etre* of such authority being the paramount interest of his client, and not an appendage of office, Lord Atkin states: *Sourendra Nath Mitra v. Tarubala Dasi, A.I.R. 1930 P.C. 158: 68 M.L.J. 651: 57 I.A. 133: 32 Bom.L.R. 645, [A.I.R. p.161].*

> "The apparent authority is derived from the known existence of the implied authority....
> ....First, the implied authority of counsel is not an appendage of office, a dignity added by the courts to the status of barrister or advocate at law. It is implied in the interests of the client, to give the fullest beneficial effect to his employment of the advocate. Secondly, the implied authority can always be countermanded by the express directions of the client. No advocate has actual authority to settle a case against the express instructions of his client. If he considers such express instructions contrary to the interests of his client, his remedy is to return his brief.

Their Lordships are unable to see why the above considerations should not apply to an

advocate in India, whose duties to his client in the conduct of a suit in no wise differ from those of advocates in England, Scotland and Ireland...."

22. Counsel's role in entering into a compromise has been traditionally understood to be confined to matters within the scope of the suit. However, a compromise decree may incorporate not only matters falling within the subject matter of the suit, but also other matters which are collateral to it. The position before the amendment in 1976 was that, in respect of the former, the decree was executable, but in respect of the latter, it was not executable, though admissible as judicial evidence of its contents.

23. Referring to Sec.375 of the Code of Civil Procedure (Act 14 of 1882), (similar to O.23, Rule 3, C.P.C. as it stood prior to the amendment of 1976), Lord Buckmaster, in *Hemanta Kumari Debi v. Midnapur Zamindari Company Limited, A.I.R. 1919 P.C. 79: 46 I.A. 240: 22 Bom.L.R. 448*, states: *[A.I.R. p.81]*

"......In the first place, it is plain that the agreement or compromise, in whole and not in part, is to be recorded, and the decree is then to confine its operation to so much of the subject matter of the suit as is dealt with by the agreement......Although the operative part of the decree would be properly confined to the actual subject matter of the then existing litigation the decree taken as a whole would include the agreement. This in fact is what the decree did in the present case. It may be that as a decree it was incapable of being executed outside the lands of the suit, but that does not prevent its being received in evidence of its contents."

24. In *Ram Juwan v. Devendra Nath Gupta, A.I.R. 1960 M.P. 280: 1960 Jab.L.J. 269: 1960 M.P.L.J. 642*, the High Court states: *[A.I.R. p.282]*

"Where a consent decree contains terms that do not relate to the suit,......such terms cannot be enforced in execution of the decree but they may be enforced as a contract by a separate suit."

See also *Vishnu Sitaram Auchat v. Ramachandra Govind Joshi, A.I.R. 1932 Bom. 466: 34 B.L.R. 849: 139 I.C. 830* and *Jasimuddin Biswas v. Bhuban Jelini, I.L.R. 34 Cal. 456.*

25. In *Ganganand Singh v. Rameshwar Singh Bahadur A.I.R. 1927 Pat 271: 102 I.C. 449*, the High Court points out that a consent decree does not stand on a higher footing than a contract between the parties. The Court always has the jurisdiction to set aside a consent decree upon any ground which will invalidate an agreement between the parties. In the absence of any such ground, the consent decree is binding on the parties.

26. Courts in India have consistently recognised the traditional role of lawyers and the extent and nature of their implied authority to act on behalf of their clients. Speaking for a Full Bench of the Kerala High Court in *Chengan Souri Nayakam v. A.N.Menon, A.I.R. 1968 Ker. 213: 1968 K.L.T. 1: 1968 Ker.L.J. 62 (F.B.)*, K.K.Mathew, J. (as he then was) observed: *[A.I.R. p.215]*

"The construction of a document appointing an agent is different from the construction of a vakalat appointing counsel. In the case of an agent the document would be construed strictly and the agent would have only such powers as are conferred expressly or by necessary implication. In the case of counsel the rule is otherwise because there we are dealing with a profession where well known rules have crystallised through usage. It is on a par with a trade where the usage becomes an additional term of the contract, if not contrary to the general law, or excluded by express agreement."

About the special position of the advocate, the learned Judge stated: *[A.I.R. p. 216]*

".......Counsel has a tripartite relationship; one with the public another with the court, and the third with his client. That is a unique feature. Other professions or callings may include one or two of these relationships. but no other has the triple duty. Counsel's duty to the public is unique in that he has to accept all work from all clients in courts in which he holds himself out as practising, however unattractive the case or the client."

See also *Jiwibai v. Ram Kumar Shrinivas Murarka Agarwala, A.I.R. 1947 Nag. 17: 1947 N.L.J. 1: 229 I.C. 402 (F.B.), Govindammal v. Marimuthu Maistry, (1958)2 M.L.J. 34: A.I.R. 1959 Mad. 7* and *Laxmidas Ranchhoddas v Savitabi Hargovindas Shah, A.I.R. 1956 Bom. 54: 57 Bom.L.R. 988: I.L.R. 1955 Bom. 955.*

27. These principles were affirmed by this Court in *Jamilabai Abdul Kadar v. Shankarlal Gulabchand, A.I.R. 1975 S.C. 2202: (1975)2 S.C.C. 609: 1975 S.C.R. (Supp.) 336.* Referring to a number of

decisions on the point, V.R.Krishna Iyer, J. observes: *[S.C.C. p.619, para 16]*:

"......Those who know how courts and counsel function will need no education on the jurisprudence of lawyer's position and powers. Of course, he hasten to enter a caveat. It is perfectly open to a party, like any other principal, to mark out in the vakalat or by particular instructions forbidden areas or expressly withhold the right to act in sensitive matters, the choice being his, as the master. If the lawyer regards these fetters as inconsistent with his position, he may refuse or return the brief. But absent speaking instructions to the contrary, the power to act takes in its wings the right and duty to save a client by settling the suit if and *only* if he does so *bona fide* in the interests and for the advantage of his client." (*emphasis in original*)

See also *Manoharbahal Colliery Calcutta v. K.N.Mishra, A.I.R. 1975 S.C. 1632: 1975 Lab.I.C. 1082: (1975)2 S.C.C. 244.*

28. After the amendment of 1976, a consent decree, as seen above, is executable in terms thereof even if it comprehends matters falling outside the subject matter of the suit, but concerning the parties. The argument of the appellant's counsel is that the legislature has intended that the agreement or compromise should be signed by the parties in person, because the responsibility for compromising the suit, including matters falling outside its subject matter, should be borne by none but the parties themselves. If this contention is valid, the question arises why the legislature has, presumably being well aware of the consistently followed practice of the British and Indian courts, suddenly interfered with the time honoured role of lawyers in the conduct of cases without specifically so stating, but by implication? Can the legislature be presumed to have fundamentally altered the position of counsel or a recognised agent, as traditionally understood in the system of law and practice followed in India and other 'common law countries' without expressly and directly so stating? There is no indication in preparatory work such as the 54th report of the Law Commission dated February 6, 1973 or in the Statement of Objects and Reasons or in the words employed by the legislature that the concept of 'agents and pleaders' of O.3, C.P.C. was in any manner altered. There is no warrant for any such presumption.

29. It is a rule of legal policy that law should be altered deliberately rather than casually. Legislature does not make radical changes in law 'by a sidewind, but only by measured and considered provisions'. (Francis Bennion's *Statutory Interpretation*, Butterworths, 1984, para 133.) As stated by Lord Devlin in *National Assistant Board v. Wilkinson, (1952)2 Q.B. 648: (1952)2 All.E.R. 255:* (Q.B. p.661)

"It is a well established principle of construction that a statute is not to be taken as effecting a fundamental alteration in the general law unless it uses words that point unmistakably to that conclusion."

Statutes relating to remedies and procedure must receive a liberal construction 'especially so as to secure a more effective, a speedier, a simpler, and a less expensive administration of law'. See Crawford's *Statutory Construction*, para 254. The object of the amendment was to provide an appropriate remedy to expedite proceedings in court. That object must be borne in mind by adopting a purposive construction of the amended provisions. The legislative intention being the speedy disposal of cases with a view to relieving the litigants and the courts alike of the burden of mounting arrears, the word 'parties' must be so construed as to yield a beneficent result, so as to eliminate the mischief the legislature had in mind.

30. There is no reason to assume that the legislature intended to curtail the implied authority of counsel, engaged in the thick of proceedings in court, to compromise or agree on matters relating to the parties, even if such matters exceed the subject matter of the suit. The relationship of counsel and his party or the recognised agent and his principal is a matter of contract; and with the freedom of contract generally, the legislature does not interfere except when warranted by public policy and the legislative intent is expressly made manifest. There is no such declaration of policy or indication of intent in the present case. The legislature has not evinced any intention to change the well recognised and universally acclaimed common law tradition of an ever alert, independent and active bar with freedom to manoeuore with force and drive for quick action in a battle of wits typical of the adversarial system of oral hearing which is in sharp contrast to the inquisitorial traditions of the 'civil law' of France and other

European and Latin American countries where written submissions have the pride of place and oral arguments are considered relatively insignificant. (See Rene David, ***English Law and French Law***-Tagore Law Lectures, 1980). 'The civil law' is indeed equally efficacious and even older, but it is the product of a different tradition, culture and language; and there is no indication, whatever, that Parliament was addressing itself to the task of assimilating or incorporating the rules and practices of that system into our own system of judicial administration.

31. The Indian legal system is the product of history. It is rooted in our soil; nurtured and nourished by our culture, languages and traditions; fostered and sharpend by our genius and quest for social justice, reinforced by history and heritage; it is not a mera copy of the English common law; though inspired and strengthened, guided and enriched by concepts and precepts of justice, equity and good conscience which are indeed the hallmark of the common law. In the words of M.C.Setalvad: ***The Common Law in India, 1960-The Hamlyn Lectures, Twelfth Series,*** *pp.1-4.*

> ".....the common law of England with its statutory modifications and the doctrines of the English courts of equity has deeply coloured and influenced the laws and the system of judicial administration of a whole sub-continent inhabited by nearly four hundred million people. The law and jurisprudence of this vast community and its pattern of judicial administration are in many matters different from those of England in which they had their roots and from which they were nurtured. Yet they bear the unmistakable impress of their origin. The massive structure of Indian law and jurisprudence resembles the height, the symmetry and the grandeur of the common and statute law of England. In it one sees English Law in the distant perspective of a new atmosphere and strange clime."

Speaking of the common law in the wider sense, the learned author continues:

> ".....But the English brought into India not only the mass of legal rules strictly known as the common law but also their traditions, outlook and techniques in establishing, maintaining and developing the judicial system. When, therefore, I speak of the common law in India I have in view comprehensively all that is of English origin in our system of law. In that wide meaning the expression will include not only what in England is known strictly as the common law but also its traditions, some of the principles underlying the English statute law, the equitable principles developed in England in order to mitigate the rigours of the common law and even the attitudes and methods pervading the British system of the administration of justice."

32. After the attainment of independence and the adoption of the Constitution of India, judicial administration and the constitution of the law courts remained fundamentally unchanged, except in matters such as the abolition of appeals to the Privy Council, the constitution of the Supreme Court of India as the apex court, the conferment of writ jurisdiction on all the High Courts, etc. The concept, structure and organisation of courts, the substantive and procedural laws, the adversarial system of trial and other proceedings and the function of judges and lawyers remained basically unaltered and rooted in the common law traditions in contradistinction to those prevailing in the civil law or other systems of law.

33. In our own system of judicial administration, if strains have developed and cracks have appeared by the stresses and pressures of the time; if aberrations have become too obvious to be ignored or too deep rooted to be corrected by an internal mechanism; if the traditional role of the legal profession requires urgent legislative scrutiny with a view to remedying the defects and strengthening and safeguarding the system; it is a matter exclusively for Parliament to consider; but the amendment in question is not addressed to that purpose.

34. Aberrations there always have been in every system of administration; but whether they are merely peripheral or transient in character-mere ripples on a placid pool-or symptomatic of deeper malady requiring structural modification by prompt legislative intervention is a matter of grave significance for the jurists, sociologists and political scientists to ponder over.

35. So long as the system of judicial administration in India continues unaltered, and so long as Parliament has not evinced an intention to change its basic character, there is no reason to assume that Parliament has, though not expressly, but

impliedly reduced counsel's role or capacity to represent his client as effectively as in the past. On a matter of such vital importance, it is most unlikely that Parliament would have resorted to implied legislative alteration of counsel's capacity or status or effectiveness. In this respect, the words of Lord Atkin in *Sourendra Nath Mitra v. Tarubala Dasi, A.I.R. 1930 P.C. 158: 68 M.L.J. 651: 57 I.A. 133: 32 Bom.L.R. 645,* comparing the Indian advocate with the advocate in England, Scotland and Ireland, are significant: (A.I.R. p.161)

"There are no local conditions which make it less desirable for the client to have the full benefit of an advocate's experience and judgment. One reason, indeed, for refusing to imply such a power would be a lack of confidence in the integrity or judgment of the Indian advocate. No such considerations have been or indeed could be advanced, and their Lordships mention them but to dismiss them."

36. Similar is the view expressed by the Rajasthan High Court in *Mohan Bai v. Jai Kishan, A.I.R. 1983 Raj. 240: 1983 Raj. L.R. 365: 1983 Raj.L.W. 289, Mohan Bai v. Smt. Jai Kishan, A.I.R. 1988 Raj. 22* and by the Gujarat High Court in *Nadirsha Hirji Baria v. Niranjankumar @ Nireshkumar Dharamchand Shah, (1983)1 G.L.R. 774.* A contrary view has been expressed by the Andhra Pradesh High Court in *Kesarla Raghuram v. Dr. Narasipalle Vasundara, A.I.R. 1983 A.P. 32: 1982 Hind.L.R. 609: (1983)1 Ren.L.R. 144,* and it does not commend itself to us.

37. We may, however, hasten to add that it will be prudent for counsel not to act on implied authority except when warranted by the exigency of circumstances demanding immediate adjustment of suit by agreement or compromise and the signature of the party cannot be obtained without undue delay. In these days of easier and quicker communication, such contingency may seldom arise. A wise and careful counsel will no doubt arm himself in advance with the necessary authority expressed in writing to meet all such contingencies in order that neither his authority nor integrity is ever doubted. This essential precaution will safeguard the personal reputation of counsel as well as uphold the prestige and dignity of the legal profession.

38. Considering the traditionally recognised role of counsel in the common law system, and the evil sought to be remedied by Parliament by the C.P.C. (Amendment) Act, 1976, namely, attainment of certainty and expeditious disposal of cases by reducing the terms of compromise to writing signed by the parties, and allowing the compromise decree to comprehend even matters falling outside the subject matter of the suit, but relating to the parties, the legislature cannot, in the absence of express words to such effect, be presumed to have disallowed the parties to enter into a compromise by counsel in their cause or by their duly authorised agents. Any such presumption would be inconsistent with the legislative object of attaining quick reduction of arrears in court by elimination of uncertainties and enlargement of the scope of compromise.

39. To insist upon the party himself personally signing the agreement or compromise would often cause undue delay, loss and inconvenience, especially in the case of non-resident persons. It has always been universally understood that a party can always act by his duly authorised representative. If a power-of-attorney holder can enter into an agreement or compromise on behalf of his principal, so can counsel, possessed of the requisite authorisation by vakalatnama, act on behalf of his client. Not to recognise such capacity is not only to cause much inconvenience and loss to the parties personally, but also to delay the progress of proceedings in court. If the legislature had intended to make such a fundamental change, even at the risk of delay, inconvenience and needless expenditure, it would have expressly so stated.

40. Accordingly, we are of the view that the words "in writing and signed by the parties', inserted by the C.P.C. (Amendment) Act, 1976, must necessarily mean, to borrow the language of O. 3, Rule 1, C.P.C.:

"any appearance, application or act in or to any court, required or authorized by law to be made or done by a party in such court, may except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, *or by his recognized agent, or by a pleader,* appearing, applying or acting as the case may be, on his behalf:

Provided that any such appearance shall, if the court so directs, be made by the party in person." (*emphasis supplied*).

41. In the present case, the notice issued under O.XXI, Rule 22 was personally served on the

defendant, but he did not appear or show cause why the decree should not be executed. The notice was accordingly made absolutely by order dated January 23, 1990 and leave was granted to the plaintiff to execute the decree. The decree passed by the High Court on June 18, 1984 in terms of the compromise was a valid decree and it constituted *res judicata*. As stated by this Court in *Shankar Sitaram Sontakke v. Balkrishna Sitaram Sontakke, A.I.R. 1954 S.C. 352: (1955)1 S.C.R. 9:* (A.I.R. p.355)

> "....It is well settled that a consent decree is as binding upon the parties thereto as a decree passed by invitum. The compromise having been found not to be vitiated by fraud, misrepresentation misunderstanding or mistake, the decree passed thereon has the binding force of *'res judicata'*."

42. S.R.Das, C.J., in *Sailendra Narayan v. Bhanja Deo v. State of Orissa, A.I.R. 1956 S.C. 346: 1956 S.C.R. 72,* states: (A.I.R. p.351)

> "....a judgment by consent or default is as effective an estoppel between the parties as a judgment whereby the court exercises its mind on a contested case...."

43. A judgment by consent is intended to stop litigation between the parties just as much as a judgment resulting from a decision of the court at the end of a long drawn out fight. A compromise decree creates an estoppel by judgment. As stated by Spencer-Bower and Turner in *Res Judicata,* (2nd edn., page 37):

> "Any judgment or order which in other respects answers to the description of a *res judicata* is nonetheless so because it was made in pursuance of the consent and agreement of the parties......Accordingly, judgments, orders, and awards by consent have always been held no less efficacious as estoppels than other judgments, orders, or decisions, though doubts have been occasionally expressed whether strictly, the foundation of the estoppel in such cases is not representation by conduct, rather than *res judicata*.
> * * *."

See also *Mohanlal Goenka v. Benoy Kishna Mukherjee, A.I.R. 1953 S.C. 65: 1953 S.C.R. 377.*

44. The consent decree made on June 18, 1984 remained unchallenged. None questioned it. The appellant never raised any doubt as to its validity or genuineness. He had no case that the decree was vitiated by fraud or misrepresentation or his counsel lacked authority to enter into a compromise on his behalf. Nevertheless, after six years he questioned its validity by means of chamber summons. This was an unsuccessful challenge by reason of delay, estoppel or *res judicata*, and was rightly so held by the High Court.

45. Accordingly, we see no merit in this appeal. It is dismissed. However, in the circumstances of the case, we do not make any order as to costs.

B.S. ------ *Appeal dismissed.*

IN THE SUPREME COURT OF INDIA

Present:- *P.B.Sawant* and *B.P.Jeevan Reddy, JJ.*

C.A.Nos.1946 and 1947 of 1980

28th November, 1991.

V.B.Rangaraj ...*Appellant*

v.

V.B.Gopalakrishnan and others ...*Respondents.*

Companies Act (I of 1956), Secs.3(iii), 26, 28, 31, 36, 39, 40 and 82 - Articles of Association of Company - Binding nature of - Shares - If movable property - Transfer of shares - If regulated by Articles - Restrictions on transfer of shares - If can be imposed - Restrictions not stipulated in Articles - Validity.

The family consisting of B and G who were brothers owned 13 shares in the defendant 2 Private Company whose total shareholding was 50 shares. In course of time, the family acquired the remaining 37 shares also and became the sole shareholder of the Company. B and G owned 25 shares each. The plaintiff, defendants 1 and 2 and one S are the sons of B and defendants 4 to 6 are the sons of G. B died on February 5, 1963 and G died on January 10, 1970. The plaintiffs alleged that in 1951 there was an oral agreement between B and G that each of the branches of the family would always continue to hold 25 shares and that if any member in either of the branches wished to sell his share/shares, he would give the first option of purchase to the members of that branch and only if the offer so made was not accepted, the shares

would be sold to others. The articles of Association of the Company were not amended to bring them in conformity with the agreement. Art.13 of the Articles of Association of the Company provided that no new member should be admitted except with the consent of the majority of the members, that on the death of any member, his heir or heirs or nominee should be admitted as a member and that if such heir or heirs or nominee was or were unwilling to become a member, such share capital should be distributed at par among the members equally or transferred to any new member with the consent of the majority of the members. Contrary to the agreement, defendant 1 sold the shares to defendants 4 to 6. Hence the plaintiff sons filed a suit for a declaration that the said sale was void and not binding on the plaintiff and defendant 2, for an order directing defendants 1 and 4 to 6 to transfer the said shares to the plaintiffs and defendant 2 and for a permanent injunction restraining defendants 4 to 6 from applying for registering the said shares in their names. The trial Court decreed the suit. The appeals filed by defendants 1 and 4 to 6 were dismissed. In second appeals, the High Court modified the decree by directing the substitution of the plaintiff as shareholder in place of defendants 4 to 6. In appeals,-

Held:- Secs.3(iii), 26, 28, 31, 36, 39, 40 and 82 of the Companies Act make it clear that the Articles of Association are the regulations of the Company binding on the company and its shareholders and that shares are movable property and that transfer is regulated by the Articles of Association of the Company. Whether under the Companies Act or Transfer of Property Act, the shares are, therefore, transferable like any other movable property. The only restriction on the transfer of the shares of the company is as laid down in the Articles, if any. A restriction which is not specified in the Articles is, therefore, not binding either on the Company or on its shareholders. The vendee of the shares cannot be denied the registration of the shares purchased by him on a ground other than that stated in the Articles. The private agreement which is relied upon by the plaintiff whereunder there is a restriction on a living member to Transfer his shareholding only to the branch of family to which he belongs in terms imposed two restrictions which are not stipulated in Art.13. Firstly, it imposes a restriction on a living member to transfer the shares only to the existing members and secondly, the transfer has to be only to a member belonging to the same branch of family. The agreement obviously, therefore, imposes additional restrictions on the member's right to transfer his shares which are contrary to the provisions of the Art.13. They are, therefore, not binding either on the shareholders or on the Company. *[Paras 7, 8 and 18]*

Cases referred to:

S.P.Jain v. Kalinga Tubes Ltd., A.I.R. 1965 S.C. 1535: (1965)2 S.C.R. 720: 35 Com.Case 351; Swaledale Cleaners Ltd., Re, (1968)1 All E.R. 1132: (1968)1 W.L.R. 432; Tett v. Phoenix Property and Investment Company Ltd., (1986)2 B.C.C. 99.

The Judgment of the Court was delivered by

Sawant, J.:- These two appeals, C.A.No.1946 of 1980 filed by defendant 1 and C.A.No.1947 of 1980 filed by defendants 4 to 6, are against the decision dated February 8, 1980 of the Madras High Court. The main question that falls for consideration in both the appeals is whether the shareholders can among themselves enter into an agreement which is contrary to or inconsistent with the Articles of Association of the Company.

2. Defendant 2, is a private limited company which all along had a total shareholding of 50. Before the joint family of the plaintiffs and defendants came to hold all the 50 shares of the company, the family was a minority shareholder holding 13 shares, the rest 37 shares being held by outsiders. In course of time, the family acquired the rest 37 shares and became the sole shareholder of the company. The family consisted of Baluswamy Naidu and Guruviah Naidu who were brothers, and each of the brothers held 25 shares in the company. The plaintiffs and defendants 1 and 2 and one Selvaraj are the sons of Baluswamy Naidu and defendants 4 to 6 are the sons of Guruviah Naidu. Baluswamy Naidu died on February 5, 1963 and Guruviah Naidu died on January 10, 1970. The plaintiffs alleged that in 1951 there was an oral agreement between Baluswamy Naidu and Guruviah Naidu that each of the branches of the family would always continue to hold equal number of shares, viz., 25 and that if any member in either of the branches wished to sell his share/shares, he would give the first option of purchase to the members of that branch and only if the offer so made was not accepted, the shares would be sold to others. Although on behalf of defendants it was disputed

that there was any such agreement entered into between the two brothers, the finding recorded by all the courts below is against the defendants. It is not dispute that the Articles of Association of the company were not amended to bring them in conformity with the said agreement.

3. Contrary to the said agreement, defendant 1, i.e., son of Baluswamy Naidu sold the shares to defendants 4 to 6 who are the sons of Guruviah Naidu. Hence the plaintiffs who are Baluswamy's sons filed the present suit for (i) a declaration that the said sale was void and not binding upon the plaintiffs and defendant 2 (who is also the son of Baluswamy Naidu but was joined as a pro forma defendant) and for (ii) an order directing defendants 1 and 4 to 6 to transfer the said shares to the plaintiffs and defendant 2 and for (iii) a permanent injunction restraining defendants 4 to 6 from applying for registering the said shares in their names and from acting adversely to the interests of the plaintiffs and defendant 2 on the basis of the transfer of the said shares.

4. The trial court decreed the suit by holding that the sale of the said shares was invalid and not binding on the plaintiffs and defendant 2, and directed both defendant 1 and defendants 4 to 6 to transfer the said shares to the plaintiffs, and granted permanent injunction as prayed for. The appeals filed by defendant 1 and defendants 4 to 6 were dismissed. In the second appeals filed by them the High Court held that the courts below had proceeded on a wrong basis. According to the High Court the suit was in effect one to enforce the agreement providing for pre-emption and the Court was entitled to mould the reliefs on the facts proved in the case and accordingly the High Court modified the decree by directing substitution of the plaintiffs as shareholders in place of defendants 4 to 6. In other words, the High Court in terms held that (i) the sale of the shares by defendant 1 in favour of defendants 4 to 6 was invalid and hence the plaintiffs and defendant 2 became entitled to purchase the said shares, (ii) the agreement was binding on the company, and (iii) the company was bound in law to register the said shares in the plaintiffs' names.

5. Shri Parasaran appearing for defendants 4 to 6 in C.A.No.1946 of 1980 contended that the agreement in effect imposed an additional restriction on the right to transfer the shares. The restriction was not envisaged by any of the Articles of Association. Hence it was not binding on any shareholder or a vendee of the shares from the shareholders. It was also unenforceable at law and, therefore, not binding on the company. Hence the sale of the shares by defendant 1 to defendants 4 to 6 was not invalid and the High Court was wrong in directing the transfer of shares in favour of the plaintiffs. Shri Bhatt appearing for defendant 1 (appellant in C.A.No.1946 of 1980) contended that assuming that the sale of shares by defendant 1 to defendants 4 to 6 was invalid in view of the agreement, the High Court could only have declared that the sale was invalid and it could not have further directed the transfer of shares in favour of plaintiffs. Defendant 1 could not be forced to sell the shares to the plaintiffs. Shri Krishnamurthy, on the other hand, contended that (i) the shareholders were bound by the agreement of 1951; (ii) the agreement was entered into to maintain the ownership of the company in the family and to ensure that the two branches of the family had an equal share in the management and profits and losses of the company; (iii) there was nothing in the Articles of Association which prohibited such agreement and (iv) the two branches of the family being party to the agreement, it was enforceable against them, and the courts have done nothing more than to enforce the agreement.

6. The basis of the judgment and decree of the High Court and of the judgments and decrees of the courts below is the alleged invalidity of the sale of the shares. It is, therefore, necessary to understand the true position of law in this behalf. Sec.3(iii) of the Companies Act (hereinafter referred to as 'the Act') defines private company to mean a company which by its Articles, restricts the right to transfer its shares, if any, and limits the number of its shares to 50 (excepting employees and ex-employees who were and are members of the Company) and prohibits any invitation to the public to subscribe for any shares in, or debentures of, the company. Sec.26 of the Act provides that in the case of a private company limited by shares, such as the defendant-3 company, there shall be registered with the Memorandum, Articles of Association signed by the subscribers of the Memorandum prescribing regulations for the company. Sec.28 provides that the Articles of Association of a company limited by shares may adopt all or any of the regulations contained in

Table A in Schedule I of the Act. Sec.31 provides for alteration of the Articles by a special resolution of the company. Sec.36 states that when the memorandum and Articles of Association are registered, they bind the company and the members thereof. Sec.39 provides for supply of the copies of Memorandum and Articles of Association to a member. Sec.40 makes it mandatory to incorporate any changes in the Articles of Association in every copy of the Articles of Association. Sec.82 defines the nature of shares and states that the shares or other interests of any member in a company shall be movable property transferable in the manner provided by the Articles of Association of the company.

7. These provisions of the Act make it clear that the Articles of Association are the regulations of the company binding on the company and its shareholders and that the shares are a movable property and their transfer is regulated by the Articles of Association of the company.

8. Whether under the Companies Act or Transfer of Property Act, the shares are, therefore, transferable like any other movable property. The only restriction on the transfer of the shares of a company is as laid down in its Articles, if any. A restriction which is not specified in the Articles is, therefore, not binding either on the company or on the shareholders. The vendee of the shares cannot be denied the registration of the shares purchased by him on a ground other than that stated in the Articles.

9. We may refer to certain authorities which reinforce the above proposition.

10. In *S.P.Jain v. Kalinga Tubes Ltd., A.I.R. 1965 S.C. 1535: (1965) 2 S.C.R. 720: 35 Com.Case 351*, it was also a case of a battle between two groups of shareholders led by P and L as they were named in the decision. In July, 1954 these two groups who held an equal number of shares of the value of Rs.21 lakhs, out of a total share capital of Rs.25 lakhs, in the company which was then a private company, entered into an agreement with the appellant who was a third party and certain terms were agreed to. Various resolutions were passed by the company to implement the agreement. However, neither the Articles of Association were changed to embody the terms of the agreement nor the resolutions passed referred to the agreement. In 1956-57, the company desired to raise a loan from the Industrial Finance Corporation and as per the requirement of the Corporation, in January 1957 the company was converted into a public company and appropriate amendments for the purpose were made in the Articles. However, even on this occasion, the agreement of July 1954 was not incorporated into the Articles. Disputes having arisen, the matter reached the Court. The appellant claimed the benefit of the agreement of July, 1954. It was held by this Court that the said agreement was not binding even on the private company and much less so on the public company when it came into existence in 1957. It was an agreement between a non-member and two members of the company and although for some time the agreement was in the main carried out, some of its terms could not be put in the Articles of Association of the public company. As the company was not bound by the agreement it was not enforceable.

11. In *Swaledale Cleaners Ltd., Re, (1968) 1 All.E.R. 1132: (1968) 1 W.L.R. 432*, it was held that it is well established that a share in a company is an item of property freely alienable in the absence of express restrictions under the Articles. This view is reiterated in *Tett v. Phoenix Property and Investment Company Ltd., (1986) 2 B.C.C. 99, 140.*

12. In Chapter 16 of Gore-Browne on Companies (43rd edn.) while dealing with transfer of shares it is stated that subject to certain limited restrictions imposed by law, a shareholder has *prima facie* the right to transfer his shares when and to whom he pleases. This freedom to transfer may, however, be significantly curtailed by provisions in the Articles. In determining the extent of any restriction on transfer contained in the Articles, a strict construction is adopted. The restriction must be set out expressly or must arise by necessary implication and any ambiguous provision is construed in favour of the shareholder wishing to transfer.

13. In Palmer's Company Law (24th edn.) dealing with the 'transfer of shares' it is stated at pages 608-09 that it is well settled that unless the Articles otherwise provide the shareholder has a free right to transfer to whom he will. It is not necessary to seek in the Articles for a power to transfer, for the Act (the English Act of 1980) itself gives such a power. It is only necessary to look to the Articles to ascertain the restrictions, if any, upon it. Thus a member has a right to transfer his share/shares to another person unless this right is clearly taken away by the Articles.

14. In Halsbury's Laws of England (4th edn.) Vol.7, para 359 dealing with 'attributes of shares' it is stated that "a share is a right to a specified amount of the share capital of a company carrying with it certain rights and liabilities while the company is a going concern and in its winding up. The shares or other interest of any member in a company are personal estate transferable in the manner provided by its articles and are not of the nature of real estate."

15. Dealing with 'restrictions on transfer of shares' in Penington's Company Law (6th edn.) at page 753 it is stated that shares are presumed to be freely transferable and restrictions on their transfer are construed strictly and so when a restriction is capable of two meanings, the less restrictive interpretation will be adopted by the Court. It is also made clear that these restrictions have to be embodied in the Articles of Association.

16. Against the background of the aforesaid legal position, we may now examine the Articles of Association of the defendant 3 - company. It is not disputed before us that the only article of the Articles of Association of the company which places restriction on the transfer of shares is Art.13. The article reads as follows:

> "13. No new members shall be admitted except with the consent of the majority of the members. On the death of any member his heir or heirs or nominee, shall be admitted as member. If such heir, heirs or nominee is/are unwilling to become a member, such share capital shall be distributed at par among the members equally or transferred to any new member with the consent of the majority of the members."

17. The aforesaid article in effect consists of three parts. The first part states that no new member shall be admitted except with the consent of the majority of the members. The second part states that on the death of any member, his heir or heirs or nominee/s shall be admitted as member/s. The third part states that if such heir or heirs or nominee/s is/are unwilling to become member/s, the share capital of the deceased member shall be distributed among the existing members equally or transferred to any new member with the consent of the majority of the members. It is, therefore, clear that even a new member can be admitted provided the majority of the members are agreeable to do so. It also appears from the word "nominee" that a living member has a right to nominate even a third party to succeed to him as a member on his death. Further the restriction on transfer by way of a right of pre-emption which is incorporated in the third part of the article is only in respect of the shareholding of the deceased member and not of a living member. Whereas the heirs/nominees are as a matter of right entitled to become members if they are willing to do so, the restriction on the transfer of shares steps [illegible] when they are unwilling to become me[illegible] restriction states that in the latter [illegible] of the deceased member shall [illegible] among the existing membe[illegible] are to be transferred to any [illegible] be done so with the consen[illegible] existing members. It ma[illegible] restriction, that firstly there i[illegible] the transfer of his shares by a living [illegible] either to the existing member or to a new [illegible] The only condition is that when the transfer is made to a new member, it will have to be approved by the majority of the members. The transfer may be to any existing member whether he belongs to one or the other branch of the family and in such case there is no need of a consent of the majority of the members. The article in fact envisages the distribution of the shareholding of the deceased member (and not of the living member) equally among the members of both branches of the family and not of any one of the branches only. Even the shares of the deceased member can be transferred to any new member when his heirs/nominees are not willing to become members. However, this can be done only with the consent of the majority of the members.

18. Hence, the private agreement which is relied upon by the plaintiffs whereunder there is a restriction on a living member to transfer his shareholding only to the branch of family to which he belongs in terms imposes two restrictions which are not stipulated in the article. Firstly, it imposes a restriction on a living member to transfer the shares only to the existing members and secondly the transfer has to be only to a member belonging to the same branch of family. The agreement obviously, therefore, imposes additional restrictions on the member's right to transfer his shares which are contrary to the provisions of the Art.13. They are, therefore, not binding either on the shareholders or on the company. In view of this legal position, the finding recorded by the courts

below that the sale by defendant 1 of his shares to defendants 4 to 6 is invalid as it is in breach of the agreement, is erroneous in law. In view of our above finding, it is unnecessary to go into the question whether the High Court was justified in directing the transfer of shares by defendants 4 to 6 to the plaintiffs even if its finding that the sale [illegible] invalid was correct. In the circumstances, the [illegible] allowed, the decree of the High Court [illegible] the plaintiffs' suit is dismissed with [illegible]

Appeals allowed.

IN TH[illegible]EME COURT OF INDIA.

Present: *Ranganath Mishra, C.J.* and
Kuldip Singh, J.

C.A.No.4336 (N.L.) of 1991 *31st October, 1991.*

Workmen represented by Secretary ...*Appellant*
v.
Reptakos Brett & Co. Ltd. and another ...*Respondents.*

(A) Labour Law - Restructuring of dearness allowance scheme by management to the disadvantage of the workmen - If and when permissible.

The management can revise the wage structure to the prejudice of the workmen in a case where due to financial stringency, it is unable to bear the burden of the existing wage. But in an industry or employment where the wage structure is at the level of minimum wage, no such revision at all is permissible not even on the ground of financial stringency. It is, therefore, for the management which is seeking restructuring of D.A. scheme to the disadvantage of workmen to prove to the satisfaction of the Tribunal that the wage structure in the industry concerned is well above minimum level and the management is financially not in a position to bear the burden of the existing wage structure. *[Para 28]*

(B) Constitution of India (1950), Art.136 - Jurisdiction of Supreme Court under - Limits - Interference with an award of Tribunal upheld by High Court - Manifest injustice caused to workmen by award - Award can be interfered with.

The Tribunal and the High Court in this case, has acted in total oblivion of the legal position as propounded by the Supreme Court in various judgments. Manifest injustice has been caused to the workmen by the award under appeal. The Court sees no force in the contention that so long as there is some basis, some material to validate the award the jurisdiction under Art.136 stands repelled. *[Para 35]*

Cases referred to:

Express Newspapers (P.) Ltd. v. Union of India, A.I.R. 1958 S.C. 578: 1959 S.C.R. 12: (1961)1 L.L.J. 339; Standard Vacuum Refining Company of India v. Its Workmen, A.I.R. 1961 S.C. 895: (1961)3 S.C.R. 536: (1961)2 L.L.J. 227; Buckingham and Carnatic Mills Ltd. v. Their Workers, (1951)2 L.L.J. 314; Good Pastor Press v. Their Workers, (1951)2 L.L.J. 718; Crown Aluminium Works v. Their Workmen, A.I.R. 1958 S.C. 30: 1958 S.C.R. 651: (1958)1 L.L.J. 1; Ahmedabad Mills Owners Association v. Textile Labour Association, A.I.R. 1966 S.C. 497: (1966)1 S.C.R. 382: (1966)1 L.L.J. 1; Monthly Rated Workmen at the Wadala Factory of the Indian Hume Pipe Company Limited v. Indian Hume Pipe Company Limited, Bombay, A.I.R. 1986 S.C. 1794: 1986 Lab.I.C. 1644: (1986)1 Lab.L.J. 520: (1986)2 S.C.J. 340: 1986 S.C.C. (Supp.) 79: (1986)2 S.C.R. 484: 1986 S.C.C. (L&S) 278; Killick Nixon Ltd. v. Killick and Allied Companies Employees' Union, (1975)2 S.C.C. 260: 1975 S.C.C. (L&S) 316: (1975) S.C.R. (Supp.) 453; Shaw Wallace and Company Ltd. v. Workmen, A.I.R. 1978 S.C. 977: (1978)2 S.C.C. 45: 1978 S.C.C. (L&S) 145; Statesman Ltd. v. Workmen, A.I.R. 1976 S.C. 758: (1976)3 S.C.R. 228: (1976)2 S.C.C. 223: 1976 S.C.C. (L&S) 218.

M.K.Ramamurthi, Senior Advocate (*Ms.Chandan Ramamurthi* and *M.A.Krishnamurthy,* Advocates with him), for Appellant.

F.S.Nariman, Senior Advocate (*R.F.Nariman, T.S.Gopalan, Raian Karanjawala, Ms.Manik Karanjawala, Ms.V.S.Rekha* and *Sajal Singh,* Advocates with him), for Respondents.

The Judgment of the Court was delivered by

Kuldip Singh, J.: Special leave granted.

2. The Reptakos Brett & Co. Ltd. (hereinafter called the 'Company') is engaged in the manufacture of pharmaceutical and dietetic speciality products and is having three units, two at Bombay

and one at Madras. The Madras factory, with which we are concerned, was set up in the year 1959. The Company on its own provided slab system of dearness allowance (DA) which means the DA paid to the workmen was linked to cost of living index as well as the basic wage. The said double-linked DA scheme was included in various settlements between the Company and the workman and remained operative for about thirty years. The question for our consideration is whether the Company is entitled to restructure the DA scheme by abolishing the slab system and substituting the same by the scheme prejudicial to the workmen on the ground that the slab system has resulted in over-neutralisation thereby landing the workmen in the high-wage island.

3. The first settlement between the Company and the workmen was entered into on August 11, 1964. While accepting the double-linked DA it further provided variable DA limited to the cost of living index upto 5.41-5.50. Further relief was given to the workmen in the settlement dated July 18, 1969 when the limit on the variable DA was removed. The Company revised the rates of DA on August 7, 1971. Thereafter, two more settlements were entered into on July 4, 1974 and January 4, 1979, respectively. Slab system with variable DA continued to be the basic constituent of the wage structure in the Company from its inception.

4. The position which emerges is that in the year 1959 the Company on its own introduced slab system of DA. In 1964 in addition, variable DA to the limited extent was introduced but the said limit was removed in the 1969 settlement. The said DA scheme was reiterated in the 1979 settlement. It is thus obvious that the slab system of DA introduced by the Company in the year 1959 and its progressive modifications by various settlements over a period of almost thirty years, has been consciously accepted by the parties and it has become a basic feature of the wage structure in the Company.

5. The workmen raised several demands in the year 1983 which were referred for adjudication to the Industrial Tribunal, Madras. The Company in turn made counter demands which were also referred to the said Tribunal. One of the issues before the Tribunal was as under:

> "Whether the demand of the management for restructuring of the dearness allowance scheme is justified, if so, to frame a scheme?"

The Tribunal decided the above issue in favour of the Company and by its award dated October 14, 1987 abolished the existing slab system of DA and directed that in future dearness allowance in the Company, be linked only to the cost of living index at 33 paise per point over 100 points of the Madras City Cost of Living Index 1936 base. The Trib... only disposed of the two references by a com... mbers. The The Company as well as the wor... event the shares rate writ petitions before the ... be first distributed challenging the award of th... s *equally and if they* two writ petitions were per... new member, it would joint memorandum date... of the majority of the the High Court in the fo... y be noticed from thi...

> "In view of the settle... no limitation ... entered into between t... membe... copy of which is enclosed, both t... member... are not pressing their respective wr... s except with regard to the issue relating to restructuring of dearness allowance."

6. The learned single Judge of the High Court upheld the findings of the Tribunal on the sole surviving issue and dismissed the writ petition of the workmen. The writ appeal filed by the workmen was also dismissed by the High Court by its judgment dated September 14, 1989. The present appeal by special leave is against the award of the Tribunal as upheld by the High Court.

7. Mr. M.K. Ramamurthi, learned counsel for the appellants has raised the following points for our consideration:

> "(*i*) The Tribunal and the High Court grossly erred in taking Rs.26 as a pre-war wage of a worker in Madras region and, on that arithmetic, reaching a conclusion that the rate of neutralisation on the basis of cost of living index in December, 1984 was 192 per cent.
>
> (*ii*) Even if it is assumed that there was over-neutralisation-unless the pay structure of the workmen is within the concept of a 'living wage' and in addition it is proved that financially the Company is unable to bear the burden-the existing pay structure/DA scheme cannot be revised to the prejudice of the workmen.
>
> (*iii*) In any case the DA scheme-which was voluntarily introduced by the Company and reiterated in various settlements cannot be altered to the detriment of the workmen."

8. Before the points are dealt with, we may have a fresh look into various concepts of wage structure

in the industry. Broadly, the wage structure can be divided into three categories-the basic "minimum wage" which provides bare subsistence and is at poverty line level, a little above is the "fair wage" and finally the "living wage" which comes at a comfort level. It is not possible to demarcate these levels of wage structure with any precision. There are, however, well accepted norms which broadly distinguish one category of pay structure from another. The Fair Wages Committee in its report published by the Government of India, Ministry of Labour, in 1949, defined the "living wage" as under:

"the living wage should enable the male earner to provide for himself and his family not merely the bare essentials of food, clothing and shelter but a measure of frugal comfort including education for the children, protection against ill-health, requirements of essential social needs, and a measure of insurance against the more important misfortunes including old age."

9. The Committee's view regarding "minimum wage" was as under:

> "the minimum wage must provide not merely for the bare sustenance of life but for the preservation of the efficiency of the worker. For this purpose the minimum wage must also provide for some measure of education, medical requirements and amenities."

The Fair Wages Committee's Report has been broadly approved by the Court in *Express Newspapers (P.) Ltd. v. Union of India, A.I.R. 1958 S.C. 578: 1959 S.C.R. 12: (1961)1 L.L.J. 339* and *Standard Vacuum Refining Company of India v. Its Workmen, A.I.R. 1961 S.C. 895: (1961)3 S.C.R. 536: (1961)2 L.L.J. 227.*

10. The Tripartite Committee of the Indian Labour Conference held in New Delhi in 1957 declared the wage policy which was to be followed during the Second Five Year Plan. The Committee accepted the following five norms for the fixation of 'minimum wage':

> "(*i*) In calculating the minimum wage, the standard working class family should be taken to consist of 3 consumption units for one earner; the earnings of women, children and adolescents should be disregarded.
>
> (*ii*) Minimum food requirement should be calculated on the basis of a net intake of calories as recommended by Dr.Aykroyd for an average Indian adult of moderate activity.
>
> (*iii*) Clothing requirements should be estimated at per capita consumption of 18 yards per annum which would give for the average workers' family of four, a total of 72 yards.
>
> (*iv*) In respect of housing, the rent corresponding to the minimum area provided for under Government's Industrial Housing Scheme should be taken into consideration in fixing the minimum wage.
>
> (*v*) Fuel, lighting and other 'miscellaneous' items of expenditure should constitute 20 per cent of the total minimum wage."

11. This Court in *Standard Vacuum Refining Company of India v. Its Workmen, A.I.R. 1961 S.C. 895: (1961)3 S.C.R. 536: (1961)2 L.L.J. 227*, has referred to the above norms with approval.

12. The concept of 'minimum wage' is no longer the same as it was in 1936. Even 1957 is way behind. A worker's wage is no longer a contract between an employer and an employee. It has the force of collective bargaining under the labour laws. Each category of the wage structure has to be tested at the anvil of social justice which is the live-fibre of our society today. Keeping in view the socio-economic aspect of the wage structure, we are of the view that it is necessary to add the following additional component as a guide for fixing the minimum wage in the industry:

> "(*vi*) children's education, medical requirement minimum recreation including festivals/ceremonies and provision for old age marriages etc. should further constitute 25 per cent of the total minimum wage."

13. The wage structure which approximately answers the above six components is nothing more than a minimum wage at subsistence level. The employees are entitled to the minimum wages at all times and under all circumstances. An employer who cannot pay the minimum wage has no right to engage labour and no justification to run the industry.

14. A living wage has been promised to the workers under the Constitution. A 'socialist' framework to enable the working people a decent standard of life, has further been promised by the 42nd Amendment. The workers are hopefully looking forward to achieve the said ideal. The promises are piling up but the day of fulfilment is nowhere in sight. Industrial wage-looked at as a whole-has not yet risen higher than the level of minimum wage.

15. Adverting to the first point raised by

Mr.Ramamurthi, it would be convenient to quote from the award-the contentions of the company and the findings reached by the Tribunal. The Company's case as noticed by the Tribunal is as under:

"It is stated that the pre-war wage of a worker in the Madras Region was Rs.26. It is evidenced by the decision of the Labour Appellate Tribunal reported in *Buckingham and Carnatic Mills Ltd. v. Their Workmen, (1951)2 L.L.J. 314 (LAT-Cal)* and *Good Pastor Press v. Their Workers, (1951)2L.L.J. 718 (IT-Mad.)*. It is contended that taking the pre-war minimum wage of worker at Madras being Rs.26 per month equivalent to 100 per cent neutralisation the rate of dearness allowance at 26 paise for every point above 100 points of cost of living index would work out to 100 per cent neutralisation. On the above basis at 2780 points of cost of living index in December 1984, the 100 per cent neutralised wage should be Rs.722.80 (basic wage of Rs.26 plus dearness allowance of Rs.696.80). As against the above wage a workman of lower grade in the petitioner-Company in December 1984 was getting a total wage of Rs.1394 comprising basic plus dearness allowance plus house rent allowance and the rate of neutralisation of dearness allowance correspondingly works out to 192 per cent."

16. The Tribunal accepted the above contentions of the Company. The evidence produced by the Company, regarding prevailing DA schemes in the comparable industries in the region, was also taken into consideration. The Tribunal finally decided as under:

"Taking an overall view of the rate of dearness allowance paid by these comparable concerns in the region and the higher total emoluments received by the workmen in this establishment, the slab system of dearness allowance now in existence shall stand abolished and in future, dearness allowance in the petitioner management would be linked only to the cost of living index at 33 paise per point over 100 points of the Madras City Cost of Living Index 1936 base and it shall be effective from the month in which the award is published in the Tamil Nadu Gazette."

17. The learned Single Judge of the High Court upheld the above findings of the Tribunal. The Division Bench of the High Court, in writ appeal, approved the award and the judgment of the learned single Judge in the following words:

"The learned Judge has observed that the counsel for the management had taken him through all the relevant materials which were filed in the form of exhibits before the Tribunal in order to show that the matter of overneutralisation cannot be in dispute. Thus the learned Judge proceeded on the basis that there is overneutralisation which called for devising a scheme for restructuring the wage scale. This finding cannot be interfered with as no materials have been placed before us by the learned counsel for the appellant to show that the exhibits which were perused by the learned Judge do not support his conclusion. Hence, we hold that the contention that there are no compelling circumstances in this case to revise the pattern of dearness allowance is unsustainable."

18. According to the Company the only purpose of DA is to enable a worker-in the event of a rise in cost of living-to purchase the same amount of goods of basic necessity as before. In other words the DA is to neutralise the rise in prices. The said purpose can be achieved by providing maximum of 100 per cent neutralisation. Accepting the calculations of the Company based on Rs.26 being the pre-war (1936) minimum wage in Madras region to Tribunal came to the finding that there was 192 per cent neutralisation.

19. The Tribunal accepted Rs.26 as the pre-war minimum wage in Madras region on the basis of the decisions of Labour Appellate Tribunal of India in *Buckingham and Carnatic Mills Ltd. v. Their Workmen, (1951)2 L.L.J. 314*, and *Good Pastor Press v. Their Workers, (1951)2 L.L.J. 718.*

20. In *Buckingham and Carnatic Mills Ltd. v. Their Workmen, (1951)2 L.L.J. 314,* the Appellate Tribunal came to the conclusion that the basic wage of the lowest category of operatives on the cost of living index of the year 1936 was Rs.28. The said wage included Rs.16 1/2 as expenses on diet. The workers relied upon the Textile Enquiry Committee's report to claim 25 per cent addition to the diet expenses. The Appellate Tribunal rejected the report on the ground that the recommendations in the said report were for the purpose of attaining the standard of "living wage" and not of 'minimum wage'. The Appellate Tribunal stated

as under:

"The Union, however, contends that Dr.Aykroyd revised his opinion when submitting a specially prepared note to assist the Textile Enquiry Committee, Bombay of which Mr.Justice Divatia was the Chairman, where he is said to have stated that 25 per cent more will have to be added for obtaining a balanced diet for a minimum wage earner. The report of that Enquiry Committee, which was published in 1940, however, shows that Dr.Aykroyd added 25 per cent as the costs of the extra items to his standard menu such as sugar etc., for the purpose of attaining the standard menu of 'living wages' (Final Report of the Textile Labour Enquiry Committee 1940, Vol.II, pages 70 to 71). Therefore, for the purpose of fixing 'minimum wages' that 25 per cent is not to be added."

21. The question as to whether the recommendations of Textile Enquiry Committee were in relation to 'living wages' or 'minimum wage' came for consideration before this Court in *Standard Vacuum Refining Company of India v. Its Workmen, A.I.R. 1961 S.C. 895: (1961)3 S.C.R. 536: (1961)2 L.L.J. 227*. This Court held as under:

"It is obvious that the Committee was really thinking of what is today described as the minimum need-based wage, and it found that judged by the said standard the current wages were deficient. In its report the Committee has used the word 'minimum' in regard to some of the constituents of the concept of living wage, and its calculations show that it did not proceed beyond the minimum level in respect of any of the said constituents. Therefore, though the expression 'living wage standard' has been used by the Committee in its report we are satisfied that Rs.50 to Rs.55 cannot be regarded as anything higher than the need-based minimum wage at the time. If that be the true position the whole basis adopted by the appellant in making its calculations turns out to be illusory."

22. This Court, therefore, in *Standard Vacuum Refining Company of India v. Its Workmen, A.I.R. 1961 S.C. 895: (1961)3 S.C.R. 536: (1961)2 L.L.J. 227*, came to the conclusion that the Textile Labour Committee Report in the year 1940 in its calculations did not proceed beyond the minimum level of the wage structure. It was further held that Rs.50 to Rs.55 was the need-based minimum wage in the year 1940.

23. The Appellate Tribunal in *Buckingham and Carnatic Mills Ltd. v. Their Workmen, (1951)2 L.L.J. 314*, therefore, misread the Textile Committee Report and was not justified in rejecting the same on the ground that it related to the category of 'living wage'.

24. We are of the view that it would not be safe to accept the findings of the Appellate Tribunal in *Buckingham and Carnatic Mills Ltd. v. Their Workmen, (1951)2 L.L.J. 314*, as the basis for fixing the wage structure to the prejudice of the workmen. This court in *Standard Vacuum Refining Company of India v. Its Workmen, A.I.R. 1961 S.C. 895: (1961)3 S.C.R. 536: (1961)2 L.L.J. 227*, has further held that in Bombay the minimum wage in the year 1940 was Rs.50 to Rs.55. On that finding it is not possible to accept that the minimum wage in the year 1936 in Madras region was Rs.26/28. So far as the *Good Pastor Press v. Their Workers, (1951)2 L.L.J. 718*, is concerned the question of determining the minimum wage in pre-war 1936 was not before the Appellate Tribunal. It only mentioned the fact that Rs.26 was held to be so by some of the subordinate tribunals. There was no discussion at all on this point. The Tribunal's reliance on this case was wholly misplaced.

25. In any case we are of the opinion that purchasing power of today's wage cannot be judged by making calculations which are solely based on 30/40 years old wage structure. The only reasonable way to determine the category of wage structure is to evaluate each component of the category concerned in the light of the prevailing prices. There has been sky-rocketing rise in the prices and the inflation chart is going up so fast that the only way to do justice to the labour is to determine the money value of various components of the minimum wage in the context of today..

26. We may now move on the second and third point raised by Mr.Ramamurthi. We take up these points together. Mr.F.S.Nariman, learned counsel appearing for the Company, contended that the existing DA scheme can be revised even to the prejudice of the workmen and for that proposition he relied upon the judgment of this Court in *Crown Aluminium Works v. Their Workmen, A.I.R. 1958 S.C. 30: 1958 S.C.R. 651: (1958)1 L.L.J. 1.* Mr.Ramamurthi has however, argued that even if the contention of Mr.Nariman is accepted in

principle, the Company has not been able to make out a case for such a revision. In *Crown Aluminium Works v. Their Workmen, A.I.R. 1958 S.C. 30: 1958 S.C.R. 651: (1958)1 L.L.J. 1,* this Court speaking through Gajendragadkar, J. (as he then was) held as under:

> "The question posed before us by Mr.Sen is: Can the wage structure fixed in a given industry be never revised to the prejudice of its workmen? Considered as a general question in the abstract it must be answered in favour of Mr.Sen. We do not think it would be correct to say that in no conceivable circumstances can the wage structure be revised to the prejudice of workmen. When we make this observation, we must add that even theoretically no wage structure can or should be revised to the prejudice of workmen if the structure in question falls in the category of the bare subsistence or the minimum wage. If the wage structure in question falls in a higher category, then it would be open to the employer to claim its revision even to the prejudice of the workmen provided a case for such revision is made out on the merits to the satisfaction of the tribunal. In dealing with a claim for such revision, the tribunal may have to consider, as in the present case whether the employer's financial difficulties could not be adequately met by retrenchment in personnel already effected by the employer and sanctioned by the tribunal. The tribunal may also enquire whether the financial difficulties facing the employer are likely to be of a short duration or are going to face the employer for a fairly long time. It is not necessary, and would indeed be very difficult, to state exhaustively all considerations which may be relevant in a given case. It would, however, be enough to observe that, after considering all the relevant facts, if the tribunal is satisfied that a case for reduction in the wage structure has been established then it would be open to the tribunal to accede to the request of the employer to make appropriate reduction in the wage structure, subject to such conditions as to time or otherwise that the tribunal may deem fit or expedient to impose."

27. The above dicta was reiterated by this Court in *Ahmedabad Mills Owners' Association v. Textile Labour Association, A.I.R. 1966 S.C. 497: (1966)1 S.C.R. 382: (1966)1 L.L.J. 1,* wherein this Court through Gajendragadkar, C.J. laid down as under:

> "The other aspect of the matter which cannot be ignored is that if a fair wage structure is constructed by industrial adjudication, and in course of time, experience shows that the employer cannot bear the burden of such wage structure, industrial adjudication can, and in a proper case should revise the wage structure, though such revision may result in the reduction of the wages paid to the employees if it appears that the employer cannot really bear the burden of the increasing wage bill, industrial adjudication, on principle, cannot refuse to examine the employer's case and should not hesitate to give him relief if it is satisfied that if such relief is not given, the employer may have to close down his business....
>
> This principle, however, does not apply to cases where the wages paid to the employees are no better than the basic minimum wage. If, what the employer pays to his employees is just the basic subsistence wage, then it would not be open to the employer to contend that even such a wage is beyond his paying capacity."

28. The ratio which emerges from the judgments of this court is that the management can revise the wage structure to the prejudice of the workmen in a case where due to financial stringency it is unable to bear the burden of the existing wage. But in an industry or employment where the wage structure is at the level of minimum wage, no such revision at all,is permissible not even on the ground of financial stringency. It is, therefore, for the management which is seeking restructuring of DA scheme to the disadvantage of the workmen to prove to the satisfaction of the tribunal that the wage structure in the industry concerned is well above minimum level and the management is financially not in a position to bear the burden of the existing wage structure.

29. Mr.Ramamurthi further relied upon this Court's judgment in *Monthly Rated Workmen at the Wadala Factory of the Indian Hume Pipe Company Limited v. Indian Hume Pipe Company Limited, Bombay, A.I.R. 1986 S.C. 1794: 1986 Lab.I.C. 1644: (1986)1 Lab.L.J. 520: (1986)2 S.C.J. 340: 1986 S.C.C. (Supp.) 79: (1986)2 S.C.R. 484: 1986 S.C.C. (L&S) 278,* and contended that an employer cannot be permitted to abolish the DA scheme which has worked smoothly for almost thirty years on the plea that the said scheme is more beneficial that

the DA scheme adopted by other industries in the region. In the *Monthly Rated Workmen at the Wadala Factory of the Indian Hume Pipe Company Limited v. Indian Hume Pipe Company Limited, Bombay, A.I.R. 1986 S.C. 1794: 1986 Lab.I.C. 1644: (1986)1 Lab.L.J. 520: (1986)2 S.C.J. 340: 1986 S.C.C. (Supp.) 79: (1986)2 S.C.R. 484: 1986 S.C.C. (L&S) 278,* the management pleaded that the dearness allowance enjoyed by the workmen was so high in certain cases that neutralisation was at rates much higher than 100 per cent. It was further contended that the management did not have the capacity to pay the slab system of DA and in the event of a claim for similar DA by other workmen the management might have to close down the factories. Khalid, J. spoke for the Court as under:

> "We thought it necessary to refer to the various awards read by Mr.Pai only for the completeness of the judgment. It has to be borne in mind that in most of these cases, awards were passed at the instance of the employees when demands were made for raising the dearness allowance paid to them. Here, we have the case of the employer trying to get over a system of dearness allowance which had worked smoothly for 18 years, on the specious plea that at the time the slab system was introduced, it was not in the expectation of anyone that the cost of price index would spiral up so much as to make it impossible for the company to pay according to this scheme. From the materials available we do not find that this plea can be accepted. The records produced show that despite this system of dearness allowance the company has been making profits and has been improving its position year by year.
>
> We do not think it necessary to deal at length about the evolution of the concept of dearness allowance. Suffice it to say that this Court has, often times, emphasised the need for a living wage to workmen instead of a subsisting wage. It is indeed a matter of concern and mortification that even today the aspirations of a living wage for workmen remain a mirage and a distant dream. Nothing short of a living wage can be a fair wage. It should be the combined effort of all concerned including the courts to extend to workmen a helping hand so that they get a living wage which would keep them to some extent at least free from want. It is against this background that a claim by employers to change the conditions of service of workmen to their detriment has to be considered and it is against this background that we have considered the award review. We are not satisfied that a case has been made out on the facts available, for a change.
>
> The question is often asked as to whether it would be advisable for tribunals and courts to revise the wage structure of workmen to their prejudice when a dispute arises. Normally the answer would be in the negative. Tribunals and courts can take judicial notice of one fact; and that is that the wages of workmen, except in exceptionally rare cases, fall within the category of mere "subsisting wages". That being so, it would be inadvisable to tinker with the wage structure of workmen except under compelling circumstances."

30. we agree with Mr.Ramamurthi that the DA scheme - which had stood the test of time for almost thirty years and had been approved by various settlements between the parties - has been unjustifiably abolished by the courts below and as such the award of the tribunal and the High Court judgments are unsustainable.

31. Mr.Nariman has also relied on the judgment of this Court in *Killick Nixon Ltd. v. Killick and Allied Companies Employees' Union, (1975)2 S.C.C. 260: 1975 S.C.C. (L&S)316: (1975) S.C.R. (Supp.) 453,* to support the findings of the tribunal and the High Court. The said case does not lay down that in all cases the slab system of DA should be abolished to the prejudice of the workers. In the said case this Court on the facts of the case came to the conclusion that the employer had made out a case for putting a ceiling on the dearness allowance. The ratio of that case cannot be extended to interfere with the existing DA schemes in every case where such schemes are beneficial to the workmen.

32. Mr.Nariman has invited our attention to para 20 of the award wherein the tribunal has held as under:

> "These figures as detailed in Ex.M-13 would establish that the company is not in a financial position to bear the additional burden on account of increased wages."

33. From the above finding it was sought to be shown that the Company has proved to the satisfaction of the Tribunal that financially it was not in a position to bear the burden of the existing DA

scheme. We do not agree with the learned counsel. The Tribunal gave the above finding in the reference made on behalf of the workmen asking for bonus increase and various other monetary benefits. While rejecting the demands of the workmen the Tribunal gave the above finding which related to the additional burden accruing in the event of acceptance of the workers' demands. The tribunal nowhere considered the financial position of the Company vis-a-vis the existing DA scheme. The Company neither pleaded nor argued before the tribunal that its financial position had so much deteriorated that it was not possible for it to bear the burden of the slab system of DA. The tribunal has not dealt with this aspect of the matter while considering the demand of the Company for restructuring the DA scheme.

34. It has been pleaded by the Company that its workmen are in a high wage island and as such the revision of DA scheme was justified. The Company also produced evidence before the Tribunal to show that comparable concerns in the region were paying lesser DA to its workmen. On the basis of the material produced before the tribunal all that the company has been able to show is that the DA paid by the Company is somewhat higher than what is being paid by the other similar industries in the region. There is, however, no material on the record to show that what is being paid by the Company is higher than what would be required by the concept of need based minimum wage. In any case there is a very long way between the need based wage and the living wage.

35. Mr.Nariman reminded us of the limits on our jurisdiction under Art.136 of the Constitution of India and relying upon *Shaw Wallace and Company Ltd. v. Workmen, A.I.R. 1978 S.C. 977: (1978)2 S.C.C. 45: 1978 S.C.C. (L&S) 145,* and *Statesman Ltd. v. Workmen, A.I.R. 1976 S.C. 758: (1976)3 S.C.R. 228: (1976)2 S.C.C. 223: 1976 S.C.C. (L&S) 218,* contended that so long as there is "some basis, some material to validate the award" the "jurisdiction under Art.136 stands repelled". The tribunal and the High Court, in this case, has acted in total oblivion of the legal position as propounded by this court in various judgments referred to by us. Manifest injustice has been caused to the workmen by the award under appeal. We see no force in the contention of the learned counsel.

36. In view of the above discussion we are of the view that the tribunal was not justified in abolishing the slab system of DA which was operating in the company for almost thirty years. We allow the appeal and set aside the award of the tribunal and the judgment of the learned Single Judge in the writ petition and of the Division Bench in the writ appeal. The reference of the Company on the issue of restructuring of the dearness allowance is declined and rejected. The appellant-workmen shall be entitled to their costs throughout which we assess at Rs.25,000.

B.S. ---- *Appeal allowed.*

IN THE SUPREME COURT OF INDIA

Present: *Ranganath Mishra, C.J.* and *T.K.Thommen, J.*

C.A.No.4447 of 1991 *12th November, 1991.*

D.C.Oswal ...*Appellant*

v.

V.K.Subbiah and others ...*Respondents.*

Landlord and tenant - Tamil Nadu Buildings (Lease and Rent Control) Act (XVIII of 1960), Sec.10(2) - Wilful default in payment of rent - Landlord consenting to collect rent for two to three months at a time - Non-payment of rent for three months if constitutes 'wilful default'.

In the several statutes operating in the different States regulating the law relating to landlord and tenant 'wilful default', has been made the ground of eviction while default is not. A situation where the landlord has consented to collect rent for two to three months at a time, non-payment of rent for three months at the time of filing of the case, the court is prepared on the basis of the evidence on record that it was not a case of 'wilful default'.

[Para 7]

Cases referred to:

S.Sundaram Pillai v. V.R.Pattabhiraman, (1985)1 S.C.C. 591; Premchand Ranka v. A.Vasantharaj Khatod, (1992)1 S.C.C. 369.

E.S.Agarwala, for Appellant.

Ms.Jayashree Ahmed, for Respondents.

The Judgment of the Court was delivered by *Ranganath Mishra, C.J.*: Special leave granted.

2. Appellant is the tenant of a premises located in Sivakasi within the State of Tamil Nadu to which the provisions of the Tamil Nadu BUildings (Lease and Rent Control) Act apply. The rental of the premises is Rs.275 per month. Respondents initiated action for eviction on the plea that there was "wilful default" in the matter of payment of rent and change of user. It was contended that the lease was residential but it had been used partly for commercial activity.

3. The appellant took the stand that rent was not being collected every month since the respondents resided away from the place where the property is situated and every two to three months they used to come and collect rent at landlords' convenience. Two receipts were produced to support this stand. Rent was collected in one case for three months and in the other for two months at a time. Admittedly at the time of filing of the petition for eviction three months' rent had fallen due. So far as the change of user was concerned it was denied by pleading that mixed use was the basis of the tenancy.

4. The original authority dismissed the petition but that has been reversed in appeal and the reversal has been upheld by the High Court.

5. Two contentions were raised before us: (*i*) there is no case of 'wilful default' particularly when the two receipts showed acceptance of rent for periods as pleaded by the tenant without demur and (*ii*) that the premises had been rented out also for business use and at any rate admittedly from 1973 there has been this change.

6. Counsel for the respondents does not dispute that from 1973 there has been change of use. The petition for eviction is of 1980. It follows that for seven years no objection was raised for change of use and for the first time when eviction was sought, conversion was made the second ground. In these circumstances, we are prepared to accept the submission advanced on behalf of the appellant that the landlords accepted the user to be also other than residential.

7. Both parties relied upon a decision of this Court in the case of *S.Sundaram Pillai v. V.R.Pattabhiraman, (1985)1 S.C.C. 591*, where ...ult and 'wilful default' were distinctly treated. ... several statutes operating in the different ...gulating the law relating to landlord and ...ful default' has been made the ground ...ile default is not. We may also refer to a short but suggestive order dated March 27, 1991, of this Court in *Premchand Ranka v. A.Vasantharaj Khatod, (1992)1 S.C.C. 369*, to support our conclusion. A situation where the landlord had consented to collect rent for two to three months at a time non-payment of rent for three months cannot constitute wilful default. Since in the present case default was of three months at the time of filing of the case, we are prepared on the basis of the evidence on record that it was not a case of 'wilful default'. Accordingly, the conclusion reached in appeal and upheld by the High Court would not be sustainable.

8. We allow the appeal and reverse the judgment of the High Court and dismiss the petition for eviction. We would, however, like to add that judicial notice can be taken of the fact that rental has escalated everywhere and appropriate rent in the present case should be raised to Rs.400 per month from January 1, 1982. The tenant should have a direction to pay the rent in advance from month to month as stated by him in the courts below and it should be by the end of every month. There will be no order as to costs.

B.S. ---- *Appeal allowed.*

IN THE SUPREME COURT OF INDIA.

Present:-*M.M.Punchhi* and *B.P.Jeevan Reddy, JJ.*

C.A.No.3173 of 1981 *6th December, 1991.*

Smt.Ambalika Padhi and another ...*Appellants*

v.

Radhakrishna Padhi and others ...*Respondents.*

Civil Procedure Code (V of 1908), O.22, Rule 1 - Subject-matter of suit being right to property - Plaintiff dying - Legal representatives, not natural heirs but claiming on basis of settlement and will - Wishing to continue suit as originally framed - If can be permitted.

Held:- This Court is of the considered opinion that the High Court was wrong in allowing the appeals and dismissing the suit on the so called 'preliminary objection' without going into the merits of the appeals. The trial court has found both the

settlement and will in favour of the present plaintiffs true and valid. The present plaintiffs are claiming under the original plaintiff and are continuing the same suit. They have not amended the basis of the suit or the reliefs asked for. The court is unable to see how their cause of action is different from the cause of action of the original plaintiff merely because they are claiming to be legal representatives under a settlement and a Will. The Division Bench considers that had the present plaintiffs been natural heirs, they would have been entitled to continue the suit but they say, since the present plaintiffs are claiming on the basis of a deed of settlement and a will, they cannot do so. With respect, this Court is unable to understand this reasoning. The present plaintiffs were indeed seeking to continue the suit as filed by the original plaintiff and for the same reliefs as were claimed by her. They were not claiming any other or different right. Indeed, the settlement and will executed in their favour were in issue in the suit filed by the original plaintiff herself and findings were recorded affirming both the deeds. The right claimed by the original plaintiff was not a personal right. It was right to property which she settled upon and bequeathed to the present plaintiffs. In such circumstances, the 'preliminary objection' raised by the appellants in their appeals which they did not raise in the suit ought not to have been entertained-much less accepted. It would be evident that none of the decisions relied upon by the High Court support the proposition that even where the subject matter of the suit is right to property and the legal representatives wish to continue the suit as originally framed, they cannot be permitted to do so if they are not natural heirs or if they claim on the basis of a deed of settlement and/or will. *[Paras 13 and 22]*

Cases referred to:

Mohinder Singh v. Chander Singh, A.I.R. 1963 Pat. 390; Om Parkash v. Union of India, A.I.R. 1978 P.& H. 272: 1978 Rev.L.R. 513; Kanwar Singh v. Om Karu, A.I.R. 1978 J.& K. 22: 1978 Ren.C.R. 568: 1978 Kash.L.J. 67; Vanammalai Thevar v. Narayana Pillai, (1968) 2 M.L.J. 622; Darappa Alagouda v. Mallappa Shivalingappa, A.I.R. 1947 Bom. 307; Ram Ugrah Ojha v. Ganesh Singh, A.I.R. 1940 All. 99: 1940 All.L.J. 32: 186 I.C. 542.

The judgment of the Court was delivered by

B.P. Jeevan Reddy, J.:- This civil appeal is preferred by the plaintiffs against the judgment and decrees of the Orissa High Court made in three appeals *viz.*, F.A.No.145 of 1971, F.A.No.9 of 1972 and F.A.No.15 of 1972.

2. The suit was instituted by Smt. Urmila Padhi for declaration of her title to plaint B Schedule lands and confirmation of her possession thereon. The basis of her claim was the partition effected on June 22, 1968. Alternatively, she prayed for a fresh partition. (Certain other minor reliefs were sought for which need not be set out here). According to her, Judhishter (D-1) and Srinivas were brothers. Defendants 2 and 3 are the sons of defendant 1. Srinivas had a son, Khalli who died long prior to the institution of the suit. Plaintiff is his widow. Defendant 1 was the kartha of the joint family and was managing its affairs. In the year 1967, there was a partition wherein plaintiff was given six annas' share while 10 annas' share was kept by defendant 1 and his family. A deed of partition was executed on June 22, 1968 and registered on June 27, 1968. Since then, parties are in separate possession and enjoyment of the lands falling to their respective shares. Plaintiff was afflicted by cancer. D-4 is her sister. She appointed the husband of defendant 4 as her power of attorney holder to manage her properties. On October 31, 1968, she executed a deed of settlement in respect of some of her properties (mentioned in plaint D schedule) in favour of defendant 4 and simultaneously cancelled the power of attorney in favour of her husband. On January 24, 1969, she executed a will in favour of her brother's son in respect of her remaining properties. While she was at Cuttack, defendants 1, 2 and 3 did not allow her or her representatives/agents to harvest the paddy or collect the usufruct from her lands. Hence the suit.

3. Plaintiff Urmila died pending the suit. Her brother's son Bhajakrishna Panda came on record as her legal representative on the basis of the will dated January 24, 1969. Defendant 4 supported the plaintiff's case and later transposed as plaintiff 2.

4. Defendant 1 too died after institution of the suit. His daughter Mahalakshmi was brought on record as his legal representative along with defendants 2 and 3. Son of Mahalakshmi was impleaded as defendant 5. The case of Mahalakshmi and D-5 was that defendant 5 was taken in adoption by plaintiff on April 17, 1968 after performing the necessary rites, which is evidenced by a registered deed of adoption. They admitted the

story of partition set up by the plaintiff. They denied the validity of the will dated January 24, 1969. According to them, plaintiff Urmila died on April 20, 1967 at Cuttack while undergoing treatment for cancer. On the date of alleged will (*i.e.* on January 24, 1969) she was not in a fit state of mind or did she have any independent advice available to her. Defendant 4 took advantage of her situation and obtained the said will from her, they stated.

5. D-2 along with his wife D-6 filed a separate written statement. They did not seriously contest the case except trying to safeguard the partition between the plaintiff and Judhishter. They put forward an *inter se* partition between D-2 and defendant 3.

6. Defendant 3 also filed a separate written statement wherein he denied the story of partition. According to him, defendant 2 is the culprit behind the whole game and it is he who, with a view to secure a major portion of the property, created several documents with the help of defendant 4's husband. According to him, a partition had taken place between defendants 1, 2 and 3 in the year 1952 and, therefore, there was no occasion for another partition in the year 1968.

7. On the above pleadings the trial court framed appropriate issues and decreed the suit with the following findings:

"(a) the plea of partition in the year 1952 put forward by defendant 3 is not established;
(b) there was a partition in 1968 as alleged by the plaintiff and it was also acted upon;
(c) the claim of adoption of defendant 5 by plaintiff, Urmila, is not established; and
(d) the deed of settlement and the will executed by plaintiff are valid."

8. Accordingly, a declaration of title over the disputed property was granted in favour of the plaintiffs and the defendants were restrained from interfering with the plaintiff's possession. The claim for mesne profits was, however, negatived.

9. Three appeals were preferred in the Orissa High Court. F.A.No.145 of 1971 by defendant 3, F.A.No.9 of 1972 by defendant 1(C) (Mahalakshmi) and her son, defendant 5 and F.A.No.15 of 1972 by defendant 2 and his wife, defendant 6. All the three appeals were heard together by a Division Bench. Before the Division Bench a "preliminary objection" was raised by the appellants/defendants that "the suit as it stands is not maintainable and plaintiffs 1 and 2 who have been substituted in place of Urmila after her death during the pendency of the suit cannot proceed on with the suit and they are also not entitled to the reliefs which were claimed by Urmila". It was contended by the defendants/appellants that the legal representatives of the deceased plaintiff, Urmila, are not members of the family; that they are strangers and that "they cannot prosecute the suit as if the original plaintiff is not dead". They relied upon certain decisions in support of their contentions. The Division Bench referred to those decisions, to the wording of reliefs sought for in the plaint and observed:

"Thus, it would appear that the contention of Urmila in the plaint was that she was in possession of the properties, especially schedule 'B' properties, and she prayed for injunction against defendants 1 to 3 for restraining them from interfering with her possession in respect of the said properties. Ambalika (plaintiff 2) is a settlee. If Ambalika now claims possession by virtue of the deed of settlement, then it would be contrary to the claim of Urmila made in the plaint and would go against the interest claimed by Urmila. Plaintiff 1 claims on the strength of a will. Of course, probate is not necessary in the district of which the properties belong. But for claim of title on the strength of will, all the requirements or the genuineness of the will are to be gone into. But from the nature of the suit set up by Urmila which is being continued by both the plaintiffs, these questions cannot be gone into. Therefore, title to be set up by both the plaintiffs relates on the deeds of assignments and testamentary document in favour of the respective plaintiffs. They have to claim title and either for confirmation of possession or for recovery of possession. This cannot be the prayer of Urmila. The claims of both the plaintiffs are based on their own individual rights, but not as representatives of Urmila to continue the suit for the reliefs claimed in the suit."

10. The Division Bench then proceeded to observe that the present plaintiffs (brought on record as legal representatives of original plaintiff, Urmila) cannot agitate their rights based upon the deed of settlement or deed of will in this suit and that they can do so only in a separate suit. The Division Bench observed further:-

> ".....the right of partition or the right as prayed for was personal to the original plaintiff namely Urmila and the present plaintiffs not being the natural heirs cannot continue the suit for partition unless they establish their right by devolution under settlement and will."

11. The Division Bench was of the opinion that the cause of action for both the present plaintiff's (who have been substituted and transposed) is entirely different from the cause of action which was available to the plaintiff. While one claims under a settlement, the other claims under a will. The deed of settlement also does not say that the possession has been delivered to plaintiff 2. Therefore, they are also not entitled to the injunction. Another observation made by the Bench is to the following effect:

> "There is no prayer for declaration of title or for recovery of possession. The present plaintiffs are not entitled to injunction inasmuch as they are not in possession. There cannot be any injunction against the defendants in respect of the entire joint family properties when admittedly they are co-sharers. In view of this possession, the decree as described above is wrong."

12. Finally, the Division Bench reiterated its view, stated earlier, that since the present plaintiffs are claiming on the basis of settlement and will, their cause of action is different from that of the original plaintiff and therefore, they cannot continue the suit. Accordingly, the bench vacated all the findings of the trial court with the observation that the legal representatives of the original plaintiff should be left to work out their own rights in independent suits. All the three appeals were allowed and the suit filed by Urmila was dismissed.

13. We have heard counsel for the parties and are of the considered opinion that the High Court was wrong in allowing the appeals and dismissing the suit on the so-called 'preliminary objection' without going into the merits of the appeals. The trial court has found both the settlement and will in favour of the present plaintiffs true and valid. The present plaintiffs are claiming under the original plaintiff and are continuing the same suit. They have not amended the basis of the suit or the reliefs asked for. We are unable to see how their cause of action is different from the cause of action of the original plaintiff, merely because they are claiming to be legal representatives under a settlement and a will. The Division Bench considers that had the present plaintiffs been natural heirs they would have been entitled to continue the suit but, they say, since the present plaintiffs are claiming on the basis of a deed of settlement and a will, they cannot do so. With respect, we are unable to understand this reasoning. The present plaintiffs were indeed seeking to continue the suit as filed by the original plaintiff and for the same reliefs as were claimed by her. They were not claiming any other or different right. Indeed, the settlement and will executed in their favour were in issue in the suit filed by the original plaintiff herself and findings were recorded affirming both the deeds. The right claimed by the original plaintiff was not a personal right. It was right to property which she settled upon and bequeathed to the present plaintiffs. In such circumstances, the 'preliminary objection' raised by the appellants in their appeals which they did not raise in the suit ought not to have been entertained-much less accepted.

14. We may now briefly refer to the decisions relied upon by the High Court in support of its proposition.

15. The first decision cited is in *Mohinder Singh v. Chander Singh, A.I.R. 1963 Pat. 390.* The reference of this decision is not given in the body of the judgment and, therefore, it is not possible to deal with the principle of the said judgment. However, two paragraphs from this judgment are quoted in the judgment under appeal which merely reiterate the well established principle that a legal representative can only prosecute the cause of action as originally framed in the suit and that if it becomes apparent that the original cause of action is being substituted by another cause of action the matter must be directed to be agitated by way of a separate suit.

16. The next decision is in *Dukh Haran Tewary v. Dulhin Bihasa Kuer, A.I.R. 1963 Pat. 390.* This decision merely holds that an order impleading certain persons as legal representatives of a deceased party does not confer upon them any title as such and that such order does not bar a regular suit regarding the question as to who is the real heir to the deceased party.

17. The next decision cited is in *Om Parkash v. Union of India, A.I.R. 1978 P.& H. 272: 1978 Rev.L.R. 513.* A learned Single Judge held that in personal actions, the cause of action comes to an end with the death of the plaintiff. In that case the plaintiff was retired from service on his attaining the age of

superannuation taking his date of birth as December 1, 1913. He filed a suit for a declaration that his retirement on the said basis is illegal. He also questioned certain punishment imposed upon him for producing false certificate. During the pendency of the appeal, he died. In those circumstances, it was held that since the claim made by him was personal in nature, the cause of action does not survive.

18. *Kanwar Singh v. Om Kant, A.I.R. 1978 J.& K. 22: 1978 Ren. C.R. 568: 1978 Kash.L.J. 67,* is a decision of a learned single Judge of Jammu and Kashmir High Court. The landlord sued for eviction of the tenant on the ground of personal necessity. Pending the appeal, the landlord died. It was held that since the right claimed was personal in nature, it does not survive the plaintiff.

19. The next decision is in *Vanammalai Thevar v. Narayana Pillai, (1968) 2 M.L.J. 622.* That was a case where the plaintiff had only a life interest conferred upon him under a deed of settlement. He instituted a suit to recover possession from alienee/defendants. Pending the appeal, the plaintiff died. It was held that since his interest was only a life interest, the relief claimed by him in the suit cannot be granted in favour of his legal representatives.

20. *Dareppa Alagouda v. Mallappa Shivalingappa, A.I.R. 1947 Bom. 307,* is again a case where it was reiterated that the legal representative of a deceased defendant cannot assert his own individual or hostile title in the suit and that he must abide by and continue the defence taken by the deceased defendant.

21. The last decision cited is in *Ram Ugrah Ojha v. Ganesh Singh, A.I.R. 1940 All. 99: 1940 All.L.J. 32: 186 I.C. 542,* a decision of a Full Bench of Allahabad High Court. In this case too, the principle affirmed is that a legal representative brought on record in place of mortgagor cannot raise a defence in the final decree proceedings that the mortgage being without legal necessity is not binding on them.

22. It would be evident that none of the decisions support the proposition that even where the subject matter of the suit is right to property and the legal representatives wish to continue the suit as originally framed, they cannot be permitted to do so if they are not natural heirs or if they claim on the basis of a deed of settlement and/or will.

23. The civil appeal, accordingly, succeeds and is allowed herewith. The judgment and decree of the Orissa High Court in the three first appeals mentioned hereinabove are set aside. The High Court shall now hear and dispose of the said appeals on merits, in accordance with law. The appellants/defendants are entitled to costs in this appeal and costs of the appeals in the High Court from the defendants.

B.S. ---- *Appeals allowed.*

IN THE SUPREME COURT OF INDIA

Present:-*M.M.Punchhi* and *B.P.Jeevan Reddy, JJ.*

Spl.Leave Petition (Civil) Nos.5514 to 5517 of 1990 - *17th December, 1991.*

K.S.Pariapoornan and others ...*Petitioners*
v.
State of Kerala and others ...*Respondents.*

Land Acquisition Act (I of 1894), Sec.23 (1-A) (as introduced by Land Acquisition (Amendment) Act (LXVIII of 1984) - Retrospectivity - Extent of - Notification under Sec.3(1) of Kerala Land Acquisition Act corresponding to Sec.4(1) of Land Acquisition Act made on 15.5.1979 - Collector making award on 30.12.1980 - Civil Court giving its decision on reference under Sec.18 on 28.2.1985 - Claimants if entitled to benefit of Sec.23(1-A) - Decision in Union of India v. Zora Singh, (1992) 1 S.C.C. 673, *giving another dimension to retrospectivity of Sec.23(1-A), held required reconsideration - Matter referred to a larger Bench.*

The notification under Sec.3(1) of the Kerala Land Acquisition Act corresponding to Sec.4(1) of the Land Acquisition Act, 1894 was issued on May 15, 1979. The Collector made an award on December 30, 1980. The claimants were not satisfied with the award. A reference under Sec.18 was asked for and made. The Court gave its decision on February 28, 1985 enhancing the compensation. Thus the award in the case was made prior to April 30, 1982 on which date the amendment Bill was introduced in Parliament, and the Court's decision was subsequent to September 24, 1984 on which date the Act came into force. The Counsel

for the claimants supported the reasoning in *Union of India v. Zora Singh, (1992)1 S.C.C. 673,* and asked for the enhanced compensation under Sec.23(1-A). The Bench which heard the appeals was of the view that the decision required reconsideration and made a reference, holding that the role of the Collector towards determination of compensation ends by making an award under Sec.11 and that award under Sec.12 is final and conclusive evidence as between the Collector and the persons interested. Yet Sec.15 enjoins on the Collector that in determining the amount of compensation he shall be guided by the provisions contained in Secs.23 and 24, providing matters to be considered or neglected in determining consideration. Thus it would be seen that between the Collector and the reference court, whose powers if invoked under Sec.18, the do's and don'ts which regulate their respective roles are set out in Secs.23 and 24 of the Act and Sec.23(1-A) is a part of these provisions. So what the court is required at a later stage to do under sub-sec.(1-A) of Sec.23, the Collector is required beforehand to do under Sec.11 read with Sec.15. Having in the first place determined the amount of compensation to be awarded both as required to further award an additional amount calculated at the rate of 12 per cent per annum on such market value, as found to be existing on the date of notification under Sec.4, for the period following commencing from the date of publication under sub-sec.(1) of Sec.4, in respect of such land, to the date of award of the Collector, or the date of taking possession of the land, whichever is earlier. It is thus evident that the governing point for determining the amount of compensation to be awarded for land acquired under the Act is the date of notification under Sec.4 of the Act. That the provisions aforesaid are substantive provisions and as amended would apply prospectively is also the dictum in *Union of India v. Zora Singh, (1992)1 S.C.C. 673.* On that basis Sec.23(1-A) can be visualized as if a superstructure on the structuring of Sec.23(1), which in turn rests on the twin pillars of Secs.11 and 15 which in turn rests on the notification under Sec.4(1) of the Act as its foundation, the date of publication of which is the foundation stone. The Legislature having designed the horizontal growth in such manner, the collective scheme which has been made operational prospectively on September 4, 1984 and onwards becomes plain because that is the date on which the amendment comes into effect. When this understanding is imported to the scheme of things, it becomes evident that a court when applying sub-sec.(1-A) of Sec.23 would do so only if it has in hand an acquisition based upon a notification under Sec.4 of the Act issued on September 24, 1984 or thereafter and not to any such notification issued earlier to that date. Same would be the role of the Collector at his end when employing Sec.15 and making an award under Sec.11 of the Act. Sec.30 of the Amendment Act, however, providing for transitional provisions is an exception giving a limited retrospectivity as to the applicability of sub-sec.(1-A) of Sec.23 so as to apply to some acquisitions commenced prior to September 24, 1984. The extended applicability is plain from the employment of the word "also" in the opening part. The Principal Act having brought in sub-sec.(1-A) of Sec.23 to the scheme of things was also ordained to apply and was deemed to have applied to two kinds of acquisition proceedings which were covered under sub-clauses (a) and (b) of sub-sec.(1) of Sec.30 of the Amendment Act. Both the clauses are not applicable to the instant fact situation, the award herein having been made prior to April 30, 1982 and was final under Sec.11, having related back to Sec.4 notification of March 21, 1978. The limited retrospection is meant to cover acquisitions regarding which notifications under Sec.4 of the Act were operative on April 30, 1982, the day when the Bill was introduced in The House of the People and in which no award had been made by the Collector before that date as also to notifications issued after April 30, 1982 regarding which award had or had not been made by the Collector before the date of commencement of the Act, *i.e.*, September 24, 1984. To these limited situations is the Court empowered to award under sub-sec.(1-A) of Sec.23 an additional amount in the case of acquisition covered under sub-clauses (a) and (b) of sub-sec.(1) of Sec.30 of the Amendment Act in relation to notifications under Sec.4 of the Land Acquisition Act issued prior to September 24, 1984. Viewed in this light, the use of sub-sec.(1-A) of Sec.22 is not available to the Court in presenti to each and every acquisition, at all and every time, whenever determining compensation under Sec.18 of the Act ignoring the date of the notification under Sec.4 and its implications. *Union of India v. Zora Singh, (1992)1 S.C.C. 673,* appears to have

conferred on the Court a power which it did not have excepting of course if the acquisition fell within the provision of Sec.30, sub-sec.(1) of the Amendment Act. The ratio appears to be too wide having serious ramifications and thus would require reconsideration. Further, the use of the word 'Court' in sub-sec.(1-A) of Sec.23 is of no significance in the context. For that matter, each of the sub-sections in Sec.23 use the said expression. The expression 'Court' in the context refers not only to civil court (on reference under Sec.18) but also to High Court and Supreme Court on appeal. Suppose in a given case, solatium is not awarded or is awarded at a lesser rate, the High Court on appeal can award the same. Similarly the principles enumerated in sub-sec.(1) are of equal application to the High Court and Supreme Court on appeal. If so, logically it should follow-applying the principles of the said decision-that even the High Court/Supreme Court can also award the said benefit, if they decide the matter on or after September 24, 1984. Indeed Sec.23 is of equal application to Collector. It cannot certainly be contended that the principles contained in and the benefits conferred by Sec.23 are not applicable to and cannot be awarded by the Collector. The fact that Sec.23 occurs in part III (Reference to Court and Procedure thereof), is of no significance. Now coming to the word 'award' occurring in sub-sec.(1-A), the said word is used not as a noun but as a verb. The expression 'award' is not defined in the Act. It is true that the decision of the civil court on a reference under Sec.18 (whether relating to quantum of compensation or to apportionment thereof) is called an award by sub-sec.(1) of Sec.26, but at the same time sub-sec.(2) of Sec.23 says that every such award shall be deemed to be a decree and the statement of the grounds of every such award.a judgment within the meaning of Sec.2(2) and Sec.2(a) respectively of the 'Code of Civil Procedure, 1908'. Be that as it may, it may be reiterated that the said expression is used as a verb in the sub-section and not as a noun. Can it be said that the word 'award' cannot be used, or is inappropriate, in the case of a High Court awarding the compensation or any other benefit under the Act? The Court thinks, not. The expression 'award' is used in the sense of 'give' or 'giving' and not in any technical sense, as something distinct in character from judgment and/or decree. The effect of the decision in *Union of India v. Zora Singh, (1992)1 S.C.C. 673,* is this: apart from the retrospective operation given by sub-sec.(1) of Sec.30 of the Amendment Act, another dimension of retrospectivity is found in the language of sub-section itself. According to it, the only relevant test is whether the civil court (under Sec.18) is rendering its decision (award) on or after the commencement of the Amendment Act-no other circumstances need be noticed. Even if the acquisition proceedings have begun and award of the Collector made prior to April 30, 1982, this benefit is available so long as the civil court (on a reference under Sec.18) renders its decision on or after September 24, 1984. It is well to remember that the said provision [sub-sec.(1-A) of Sec.23] is a provision in the realm of substantive law. This is also the view expressed in *Union of India v. Zora Singh, (1992)1 S.C.C. 673;* it says so expressly. In the case of substantive provisions, retrospective operation is not presumed unless the Act provides therefor either expressly or by necessary intendment. Ordinarily, therefore, the amended provision would not apply to pending proceedings. Suppose, the amendment had taken away or curtailed an existing benefit, what would be the position? The principle cannot be different, merely because the amendment either confers new benefits or enhances the existing benefits. The Parliament, by enacting Sec.30(1) of the Amendment Act has made its intention clear, as to what extent the said provision shall have retrospective operation. The court cannot add to it. Sec.30(1) only must be looked to determine the ambit and reach of the retrospectivity of Sec.23(1-A). The language of sub-sec.(1-A) is not sufficient to, (nor does it warrant) infer another dimension of retrospectivity to it. *[Paras 9, 10, 11 and 12]*

Cases referred to:

Union of India v. Zora Singh, (1992)1 S.C.C. 673; Union of India v. Raghubir Singh, (1989)2 S.C.C. 754; Union of India v. Filip Tiago De Gama of Vedem Vasco De Gama, (1990)1 S.C.C. 277; Kanthimathy Plantation Pvt. Ltd. v. State of Kerala, (1989)4 S.C.C. 650.

P.S.Poti, T.S.K.Iyer and *G.Visvanatha Iyer,* Senior Advocates (*V.B.Saharya, S.Balakrishnan, K.R.Nambiar* and *George,* Advocates, with them), for the appearing parties.

The Order of the Court was delivered by

M.M.Punchhi and *B.P.Jeevan Reddy, JJ.:-* Retroactivity of some of the provisions of Land

Acquisition Act, 1894, as amended by Land Acquisition Amendment Act 68 of 1984, has been a source of good amount of conflict of opinion in this Court as well as among the High Courts in the country. We are not happy in adding to it but we find it inescapable, convinced as we are, that the view taken by a three Judge bench of this Court in *Union of India v. Zora Singh, (1992)1 S.C.C. 673,* requires reconsideration. We shall first state the facts in S.L.P.No.5514 of 1990 to indicate how the question arises.

2. The notification under Sec.3(1) of the Kerala Land Acquisition Act (corresponding to Sec.4(1) of the Land Acquisition Act, 1894) was issued on March 21, 1978. Declaration under Sec.6 was made on May 15, 1979. The Land Acquisition Officer (Collector) passed the award on December 30, 1980 and possession of acquired lands taken some time in 1981. The claimants were not satisfied with the award. They asked for a reference under Sec.18 which was made. The civil court gave its decision of February 28, 1985, enhancing the compensation.

3. Land Acquisition Amendment Bill, which was later enacted into Amendment Act 68 of 1984, was introduced in Parliament on April 30, 1982. The Amendment Act came into force with effect from September 24, 1984. For the present purpose it is sufficient to notice only two provisions of the Amendment Act. By Sec.15 of the Amendment Act, sub-sec.(1-A) was introduced in Sec.23. It reads:

> "23(1-A): In addition to the market-value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market-value for the period commencing on and from the date of the publication of the notification under Sec.4, sub-sec.(1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.
>
> *Explanation:*- In computing the period referred to in this sub-section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any Court shall be excluded."

4. By Sec.15 of Amendment Act sub-sec.(2) of Sec.23 was also amended. In place of the words "15 per centum", the words "30 per centum" were substituted. Secs.28 and 34, relating to interest were also amended, raising the rate of interest, *vide* Secs.18 and 20 of the Amendment Act.

5. Though the Amendment Act came into force with effect from September 24, 1984, some of its provisions were given retrospective effect, namely, the newly introduced sub-sec.(1-A) of Sec.23 and the amended sub-sec.(2) of Sec.23 and Secs.28 and 34. This was done by Sec.30 of the Amendment Act which reads thus:

> "30. *Transitional provisions:*- (1) The provisions of sub-sec.(1-A) of Sec.23 of the principal Act, as inserted by clause (a) of Sec.15 of this Act, shall apply, and shall be deemed to have applied, also to, and in relation to,--
>
> (a) every proceeding for the acquisition of any land under the principal Act pending on the 30th day of April, 1982 [the date of introduction of the Land Acquisition (Amendment) Bill, 1982, in the House of the People], in which no award has been made by the Collector before that date;
>
> (b) every proceeding for the acquisition of any land under the principal Act commenced after that date, whether or not an award has been made by the Collector before the commencement of this Act.
>
> (2) The provisions of sub-sec.(2) of Sec.23 and Sec.28 of the principal Act, as amended by clause (b) of Sec.15 and Sec.18 of this Act respectively, shall apply, and shall be deemed to have applied, also to, and in relation to, any award made by the Collector or Court or to any order passed by the High Court or Supreme Court in appeal against any such award under the provisions of the principal Act after the 30th day of April, 1982 [the date of introduction of the Land Acquisition (Amendment) Bill, 1982, in the House of the People] and before the commencement of this Act.
>
> (3) The provisions of Sec.34 of the principal Act, as amended by Sec.20 of this Act, shall apply, and shall be deemed to have applied, also to and in relation to,--
>
> (a) every case in which possession of any land acquired under the principal Act had been taken before the 30th day of April, 1982 [the date of introduction of the Land Acquisition (Amendment) Bill, 1982, in the House of the People], and the amount of compensation for such acquisition had not been paid or

deposited under Sec.31 of the principal Act until such date, with effect on and from that date; and

(b) every case in which such possession has been taken on or after that date but before the commencement of this Act without the amount of compensation having been paid or deposited under the said Sec.31, with effect on and from the date of taking such possession."

6. The question that arises in this batch of S.L.Ps. is whether the claimants are entitled to the benefit of Sec.23(1-A)? It is relevant to recall that the award of the Collector in this case was made on December 30, 1980, *i.e.*, prior to April 30, 1982 and the decision of the civil court on reference under Sec.18 is dated February 28, 1985, *i.e.*, subsequent to the coming into force of the Act.

7. Sub-sec.(1) of Sec.30 of the Amendment Act gives a limited retrospective effect to sub-sec. (1-A) of Sec.23. The said sub-section applies also to and in relation to two situations:

(i) a case where the proceedings for acquisition of land are pending under the principal Act on April 30, 1982, but wherein no award is made by the Collector before the said date and;

(ii) a case where the proceedings for acquisition of land are commenced after April 30, 1982. In such a case, it is immaterial whether the award by the Collector is made before September 24, 1984 or subsequent thereto.

8. It is evident that the case before us does not fall in either of the two situations contemplated by sub-sec.(1) of Sec.30 of the Amendment Act. In this case, not only the proceedings of land acquisition are initiated prior to April 30, 1982, the award of the Collector is also made prior to the said date. If so it should follow that the benefit of sub-sec.(1-A) of Sec.23 is not available to the claimants here. Mr.Poti, the learned counsel for the claimants, however, relies upon the aforesaid decision of a three Judge bench of this Court in support of his contention that even in a case like the present one, the said benefit is available. The facts of that case are practically similar to the facts of the case before us. The notification under Sec.4 was issued in 1979, the declaration in 1981 and the award of the Collector made on March 31, 1981. A reference was made to the civil court under Sec.18 which was decided in the year 1985 (in some cases, in 1986). The question considered therein was whether in such a case benefit of Sec.23 (1-A) can be given to the claimants-landholders. The bench took the view particularly on the basis of the language employed in Sec.23(1-A), that the benefit thereunder is available to all cases where the civil court makes its award on or after the coming into force of the Amendment Act. Kania, J. speaking for the Division Bench laid particular stress upon the words "court" and "award" occurring in the said sub-section. The opinion expressed is that the expression "court" as defined in the Act means a civil court and that the word "award" is applicable only to the decision or determination of the Collector and civil court, but not to the decision/determination by the High Court, or Supreme Court on appeal. Accordingly it is held that the civil court (on reference under Sec.18) can award the amount provided by the said sub-section in every case decided by it, after the coming into force of the said sub-section, irrespective of any other circumstance. In other words, whether the proceedings for acquisition have begun before or after April 30, 1982 and whether the award of the Collector is made before or after April 30, 1982, the civil court (on reference under Sec.18) can award the said benefit so long as its decision is rendered after the commencement of the Amendment Act (September 24, 1984). The said decision is thus based upon the language of Sec.23(1-A) itself and is unrelated to and is independent of the limited retrospectivity given to the said sub-section by sub-sec.(1) of Sec.30 of the Amendment Act. The correctness of this reasoning is questioned by Shri T.S.Krishnamurthy Iyer, the learned counsel for the State of Kerala. Shri Poti, learned counsel for the claimants-landholders however supported its reasoning. We have heard both the counsel at some length and are of the respectful opinion that the view expressed by the bench does not appear to be in accordance with the language and intention of the Amendment Act.

9. Now, one can hit straight in the bull's eye. Sec.23(1) enjoins the Court to take into consideration six factors, as enumerated therein, in determining the amount of compensation to be awarded for the land acquired under the Act. The first factor, jurisdictional in nature, is to determine the market value of the land at the date of the publication of the notification under Sec.4(1). Sec.24 enumerates eight factors which the court is forbidden from taking into consideration. The court obliged for the purpose is the Principal Civil

Court of Original Jurisdiction, unless otherwise provided, as per sub-sec.(d) of Sec.3 of the Act. That such is the court has also been spelled out in *Union of India v. Raghubir Singh, (1989)2 S.C.C. 754,* but in a different context. The role of the Collector towards determination of compensation ends by making an award under Sec.11 and that award under Sec.12 is final and conclusive evidence as between the Collector and the persons interested. Yet Sec.15 enjoins on the Collector that in determining the amount of compensation he shall be guided by the provisions contained in Secs.23 and 24, providing matters to be considered or neglected in determining consideration. Thus it would be seen that between the Collector and the Reference Court, whose powers if invoked under Sec.18, the do's and don'ts which regulate their respective roles are set out in Secs.23 and 24 of the Act and Sec.23(1-A) is a part of those provisions. So what the Court is required at a later stage to do under sub-sec.(1-A) of Sec.23, the Collector is required beforehand to do under Sec.11 read with Sec.15. Having in the first place determined the amount of compensation to be awarded for land, as required by Sec.23(1), both in their respective spheres, are required to further award an additional amount calculated at the rate of 12 per cent per annum on such market value, as found to be existing on the date of notification under Sec.4,*for the period following commencing from the date of publication under sub-sec.(1) of Sec.4, in respect of such land, to the date of award of the Collector, or the date of taking possession of the land, whichever is earlier.* [*emphasis laid*]. It is thus evident that the governing point for determining the amount of compensation to be awarded for land acquired under the Act is the date of notification under Sec.4 of the Act. That the provisions aforesaid are substantive provisions and as amended would apply prospectively is also the dictum in *Union of India v. Zora Singh, (1992)1 S.C.C. 673.* On that basis Sec.23(1-A) can be visualized as if a superstructure on the structuring of Sec.23(1), which in turn rests on the twin pillars of Secs.11 and 15 which in turn rests on the notification under Sec.4 of the Act as its foundation, the date of publication of which is the foundation stone. The legislature having designed the horizontal growth in such manner, the collective scheme which has been made operational prospectively on September 24, 1984 and onwards becomes plain because that is the date on which the amendment comes into effect. When we import this understanding to the scheme of things it becomes evident that a Court when applying sub-sec.(1-A) of Sec.23 would do so only if it has in hand an acquisition based upon a notification under Sec.4 of the Act issued on September 24, 1984 or thereafter and not to any such notification issued earlier to that date. Same would be the role of the Collector at his end when employing Sec.15 and making an award under Sec.11 of the Act.

10. Sec.30 of the Amendment Act however providing for transitional provisions is an exception giving a limited retrospectivity as to the applicability of sub-sec.(1-A) of Sec.23 so as to apply to some acquisitions commenced prior to September 24, 1984. The extended applicability is plain from the employment of the word "also" in the opening part. The principal Act having brought in sub-sec.(1-A) of Sec.23 to the scheme of things was also ordained to apply and was deemed to have applied to two kinds of acquisition proceedings which were covered under sub-clauses (a) and (b) of sub-sec.(1) of Sec.30 of the Amendment Act. As has been spelled out in this order earlier both the clauses are not applicable on the instant fact situation, the award herein having been made prior to April 30, 1982 and was final under Sec.11, having related back to Sec.4 notification of March 21, 1978. The limited retrospection is meant to cover acquisitions regarding which notifications under Sec.4 of the Act were operative on April 30, 1982, the day when the Bill was introduced in the House of the People and in which no award had been made by the Collector before that date [*vide:* clause (a)] as also to notifications issued after April 30, 1982 regarding which award had or had not been made by the Collector before the date of commencement of the Act, *i.e.*, September 24, 1984 [*vide:* clause (b)]. To these limited situations is the Court empowered to award under sub-sec.(1-A) of Sec.23 an additional amount in the case of acquisition covered under sub-clauses (a) and (b) of sub-sec.(1) of Sec.30 of the Amendment Act in relation to notifications under Sec.4 of the Land Acquisition Act issued prior to September 24, 1984. Viewed in this light, the use of sub-sec.(1-A) of Sec.23 is not available to the court *in presenti* to each and every acquisition, at all and every time, whenever determining compensation under Sec.18 of the Act ignoring the date of the

notification under Sec.4 its implications. *Union of India v. Zora Singh, (1992)1 S.C.C. 673,* appears to us to have conferred on the Court a power which it did not have excepting of course if the acquisition fell within the provision of Sec.30, sub-sec.(1) of the Amendment Act. The ratio appears to us to be too wide having serious ramifications and thus would require reconsideration.

11. Further, in our opinion, the use of the word 'Court' in sub-sec.(1-A) of Sec.23 is of no significance in the context. For that matter each of the sub-sections in Sec.23 use the said expression. The expression 'Court' in the context refers not only to civil court (on reference under Sec.18) but also to High Court and Supreme Court on appeal. Suppose in a given case, solatium is not awarded or is awarded at a lesser rate, the High Court on appeal can award the same. Similarly the principles enumerated in sub-sec.(1) are of equal application to the High Court and Supreme Court on appeal. If so, logically it should follow-applying the principle of the said decision-that even the High Court/ Supreme Court can also award the said benefit, if they decide the matter on or after September 24, 1984. Indeed Sec.23 is of equal application to Collector. It cannot certainly be contended that the principles contained in and the benefits conferred by Sec.23 are not applicable to and cannot be awarded by the Collector. The fact that Sec.23 occurs in Part III (Reference to Court and Procedure thereof) is of no significance. Now coming to the word 'award' occurring in sub-sec.(1-A), the said word is used not as a noun but as a verb. The expression 'award' is not defined in the Act. It is true that the decision of the civil court on a reference under Sec.18 (whether relating to quantum of compensation or to apportionment thereof) is called an award by sub-sec.(1) of Sec.26 but at the same time sub-sec.(2) of Sec.23 says that every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of Sec.2(2) and Sec.2(9) respectively of the 'Code of Civil Procedure, 1908'. Be that as it may, we may reiterate that the said expression is used as a verb in the sub-section and not as a noun. Can it be said that the word 'award' cannot be used, or is inappropriate, in the case of a High Court awarding the compensation or any other benefit under the Act? We think, not. The expression 'award' is used in the sense of 'give' or 'giving' and not in any technical sense, as something distinct in character from judgment and/or decree.

12. The effect of the decision in *Union of India v. Zora Singh, (1992)1 S.C.C. 673,* is this: apart from the retrospective operation given by sub-sec.(1) of Sec.30 of the Amendment Act, another dimension of retrospectivity is found in the language of sub-section itself. According to it, the only relevant test is whether the civil court (under Sec.18) is rendering its decision (award) on or after the commencement of the Amendment Act-no other circumstances need be noticed. Even if the acquisition proceedings have begun and award of the Collector made prior to April 30, 1982, this benefit is available so long as the civil court (on a reference under Sec.18) renders its decision on or after September 24, 1984. It is well to remember that the said provision [sub-sec.(1-A) of Sec.23] is a provision in the realm of substantive law. This is also the view expressed in *Union of India v. Zora Singh, (1992)1 S.C.C. 673;* it says so expressly. In the case of substantive provisions, retrospective operation is not presumed unless the Act provides therefor either expressly or by necessary intendment. Ordinarily, therefore, the amended provision would not apply to pending proceedings. Suppose, the amendment had taken away or curtailed an existing benefit, what would be the position? The principle cannot be different, merely because the amendment either confers new benefits or enhances the existing benefits. The Parliament, by enacting Sec.30(1) of the Amendment Act has made its intention clear, as to what extent the said provision shall have retrospective operation. We cannot add to it. We must look only to Sec.30(1) to determine the ambit and reach of the retrospectivity of Sec.23(1-A). In our respectful opinion, the language of sub-sec.(1-A) is not sufficient to, nor does it warrant, infer another dimension of retrospectivity to it.

13. The opinion expressed by us was also the opinion of a bench of two Judges of this Court in *Union of India v. Filip Tiago De Gama of Vedem Vasco De Gama, (1990)1 S.C.C. 277,* which has of course been overruled in *Union of India v. Zora Singh, (1992)1 S.C.C. 673.* The facts *Union of India v. Filip Tiago Degama of Vedem Vaseo De Gama, (1990)1 S.C.C. 277,* are also similar to the facts in *Union of India v. Zora Singh, (1992)1 S.C.C. 673,* and the facts of the case before us. There too, award of the Collector was made prior to April 30,

1982 and the decision of the civil court on reference under Sec.18 rendered subsequent to September 14, 1984, that is on May 28, 1985. Question arose, whether in such a situation the benefit of Sec.23(1-A) can be given to the landholders. The learned Judges were of the opinion that in such a case the said benefit was not available. The reasoning of the bench runs thus:

> "The objective words used in this sub-section are similar to those that are used in Sec.23(2). It enjoins a duty on the court to award the additional amount at 12 per cent on the market value of the land for the period prescribed thereunder. But this again is a part of the scheme for determining compensation under Sec.23(1) of the Act. It also operates on the market value of the land acquired. It is plainly and distinctly prospective in its operation since market value has to be determined as on the date of publication of notification under Sec.4(1). But the legislature has given new starting point for operation of Sec.23(1-A) for certain cases. That will be found from Sec.30, sub-secs.(1)(a) and (b) of the Transitional Provisions."

14. The learned Judges then referred to language of sub-sec.(1) of Sec.30 of the Amendment Act and held that entitlement to the additional amount provided by Sec.23(1-A) depends upon either of the clauses in sub-sec.(1) of Sec.30 being satisfied and in no other case. The learned Judges also pointed out, and in our respectful opinion rightly, the distinction in the language used in sub-sec.(1) and sub-sec.(2) of Sec.30. Whereas sub-sec.(1) speaks of an award by the Collector alone, sub-sec.(2) speaks of an award by Collector as well as the Court. This distinction indicates that wherever the Parliament intended that the benefit should be extended even by the Court, it said so expressly.

15. Mr.Krishnamurthy Iyer contends that the decision in *Union of India v. Zora Singh, (1992)1 S.C.C. 673,* runs counter to the entire basis and reasoning of the decision of the Constitution Bench in *Union of India v. Raghubir Singh, (1989)2 S.C.C. 754. Union of India v. Zora Singh, (1992)1 S.C.C. 673,* has explained and distinguished *Union of India v. Raghubir Singh, (1989)2 S.C.C. 754,* as dealing with Sec.30(2) and not with the question at issue in *Union of India v. Zora Singh, (1992)1 S.C.C. 673.* Since, we are referring the matter to a larger bench, we do not wish to express any opinion on this submission of Shri Iyer. It is true that in *Union of India v. Raghubir Singh, (1989)2 S.C.C. 754,* this Court's correlating of sub-sec.(2) of Sec.30 of the Amendment Act with sub-sec.(2) of Sec.23 of the principal Act lead the Court to award enhanced solatium and enhanced interest as provided by sub-clause (b) of Sec.15 and Sec.18 of the Amendment Act, but that field is totally a separate field and cannot have any bearing to the controversy in hand. It is to be remembered that the provisions in the Parent Act remain good unless amended or altered at a later stage. The transitional provisions in the Amendment Act, on the other hand, cover matters which are in the pipeline and are in transit till reaching their destination. On clearance of the transitional load the transitional provisions exhaust themselves having outlived their utility. This in our view is also an aid which could go towards reconsideration of the ratio in *Union of India v. Zora Singh, (1992)1 S.C.C. 673.*

16. Mr.Krishnamurthy Iyer, learned counsel for the State of Kerala raised yet another contention which we must deal with. It is this: In the State of Kerala, the Kerala Land Acquisition Act, 1961 (which had received the asset of the President) was in force until September 24, 1984 when the Land Acquisition Act, 1894 was extended to that State by virtue of the amendment effected in Sec.1(2) of the Land Acquisition Act, 1894 by the Amendment Act 68 of 1984. All the proceedings for acquisition of land until then were being taken under the Kerala Act. Only with effect from September 24, 1984, has the Central Act come into operation. If so, none of the provisions of the Central Act can have retrospective effect so as to slide into the operation of Kerala Act. The provisions of Central Act, even as amended in 1984, do operate only on and from September 24, 1984 and cannot be given any retrospective effect-it is submitted. We cannot agree. Sub-sec.(2) of Sec.1 of the principal Act, prior to its amendment in 1984, applied the said Act to whole of India except "part B States". By the said Amendment Act, the words "part B States" were substituted by the words "the State of Jammu and Kashmir". The effect is that the Central Act stood extended to part B States as well-*i.e.*, to the entire country except the State of Jammu and Kashmir. It is true that this extension is on and with effect from September 24, 1984 but by virtue of this very Amendment Act, certain provisions of the principal Act, as amended by the

Amendment Act, were given retrospective effect to the extent specified. In such a case it would be obvious that the said retrospective operation is equally operative and effective. We see no inconsistency in saying so. Indeed, saying otherwise would introduce an element of inconsistency. It has been held by this Court in *Kanthimathy Plantation Pvt. Ltd. v. State of Kerala, (1989)4 S.C.C. 650*, that the effect of amendment of sub-sec.(2) of Sec.1 of the principal Act is the same as the repeal of the Kerala Act and that same consequences follow. It has been held that Sec.6 of the General Clauses Act, 1897 applies in such a situation, even though, as a matter of fact, the Kerala Act becomes inoperative not by any repealing provision but by virtue of clause (1) of Art.254 of the Constitution. Accordingly we reject the contention of Shri Iyer.

17. For the reasons recorded hereinabove the matter is referred to a larger bench for considering the correctness of the decision in *Union of India v. Zora Singh, (1992)1 S.C.C. 673*. The papers may accordingly be placed before the Hon'ble the Chief Justice of India for appropriate orders in this behalf.

B.S. ------ *Matter referred to a larger Bench.*

IN THE SUPREME COURT OF INDIA.

Present:- *Ranganath Mishra, C.J.* and *P.B.Sawant, J.*

W.P.(Civil) Nos.1141 of 1988 and 742 of 1990

5th August, 1991.

Common Cause, A registered Society ...*Petitioner*
v.
Union of India and others ...*Respondents.*

(A) Consumer Protection Act (1986) - Constitution of District Forums for every District - Directions for - Issued.

Within two months from today, every district shall have a District Forum which would be presided over by an exclusively appointed Judicial Officer in terms of the prescription of the statute. In such districts only, where the minimum monthly load is not above 150 consistently for a six month period, it would be open to the State Government with the concurrence of the High Court to continue a sitting District Judge to do this work but the District Judge should devote attention to complaints under the statute on three alternate days of every week which would mean that he should be sitting as a consumer court on three days a week. It is not intended to divert judicial attention from normal work by our order and if the High Court is of the opinion that this would affect the normal judicial work, it is open to the High Court not to agree to this arrangement and that would mean that in those areas, the State Government will have an obligation to appoint a wholetime Judicial Officer. *[Para 4]*

(B) Consumer Protection Act (1986) - Administrative control over the forums - National commissions be empowered to exercise administrative supervision over State Commissions and State Commissions to exercise such administration in their respective areas of control - Directions issued.

While the Act has contemplated judicial Superintendence, there is no provision for administrative superintendence. This is a lacuna in the statute. Realising this defect, the court had pointed out earlier that the requisite forum should be conferred with the powers of superintendence and the court commends to the Union Government as quickly as possible to remove the deficiency by conferring appropriate power of superintendence on the State and the National Commissions. Until that is done, it is directed that to meet the situation, the National Commission would be entitled to exercise administrative jurisdiction over the State Commissions and the State Commissions would be entitled to exercise such administrative jurisdiction in their respective areas of control. *[Para 6]*

The Court made the following

ORDER: This matter has been pending here for about three years now. With a view to making the Act operate effectively and for the benefit of the consumers, we have made various orders. At our request Mr.Justice Eradi, Chairman of the National Commission, has gone round the entire country and made his reports. Deficiencies indicated in his report have been highlighted in the submissions in court and we have also made different orders to meet the loopholes indicated in the report of Mr.Justice Eradi; yet we find that in most of the States, the statutory scheme is not fully operative yet.

2. The Act envisages appointment of a District Forum in every district. Though the Act has been in force for about four years now, we find that in most of the States, the practice prevalent is of appointing a forum at the divisional level or appointing the District Judge as Ex-Officio Chairman of the District Forum. On account of this position, many consumers who have smaller grievances to ventilate are not able to go to the divisional headquarter, and the Judicial Officers who have been given additional duty to act as Chairman of the District Forums under the Act are not able to sit to work everyday. As a consequence the District Forum sits only once a week. The statement of institutions placed before us indicates that inflow is more than the disposal. It is obviously on account of the fact that full attention is not possible to be given by the District Forums to the complaints.

3. We have told counsel appearing for the different States as also the learned Additional Solicitor General and there are not two opinions, that the scheme of the statute is that every district must have its forum. If that be the legislative mandate, there can be no dispute that most of the States have failed to comply with the statutory requirement.

4. We direct that within two months from today, every district shall have a District Forum which would be presided over by an exclusively appointed Judicial Officer in terms of the prescription of the statute. In such districts only, where the minimum monthly load is not above 150 consistently for a six month period, it would be open to the State Government with the concurrence of the High Court to continue a sitting District Judge to do this work but the District Judge should devote attention to complaints under the statute on three alternate days of every week which would mean that he should be sitting as a consumer court on three days a week. We do not intend to divert judicial attention from normal work by our order and if the High Court is of the opinion that this would affect the normal judicial work, it is open to the High Court not to agree to this arrangement and that would mean that in those areas, the State Government will have an obligation to appoint a wholetime Judicial Officer.

5. Compliance report shall be furnished by the appropriate authorities in every State to the Registry of this Court in the shape of an affidavit within two weeks after two months. We must make it clear that we intend strict follow up action to be taken. If there be any failure in future, we would require contempt action to be initiated for violation of our directions.

6. An amendment to the Act is in contemplation as we are told at the Bar. There is some amount of dispute as to whether the amendment contains provisions for giving administrative and superintending jurisdiction to the National Forum over the State Commissions and to the State Commissions over District Forums. Experience shows that on account of want of such authority, the National Forum is not able to exercise appropriate jurisdiction over the State Forums and the State Forums are not able to exercise appropriate control over District Forums. Proper operation of the statute requires both administrative and judicial superintendence. While the Act has contemplated judicial superintendence, there is no provision for administrative superintendence. This is a lacuna in the statute. Realising this defect, we had pointed out earlier that the requisite forum should be conferred with the powers of superintendence and we command to the Union Government as quickly as possible to remove the deficiency by conferring appropriate power of superintendence on the State and the National Commissions. Until that is done, we direct that to meet the situation, the National Commission would be entitled to exercise administrative jurisdiction over the State Commissions and the State Commissions would be entitled to exercise such administrative jurisdiction in their respective areas of control. This order shall be forwarded to the National Commission as also to the State Commissions forthwith.

7. Learned Additional Solicitor General says that the Government of India has cleared the setting up of a second forum in Delhi and has approached the High Court for necessary concurrence. We request the learned Chief Justice of the Delhi High Court to clear the recommendation within a fortnight from today so that the District Forum may be set up by September 1, 1991.

8. The writ petitions are directed to be listed on October 22, 1991.

B.S. ------ *Interim orders passed.*

IN THE SUPREME COURT OF INDIA.

Present:- *N.M.Kasliwal* and *B.P.Jeevan Reddy, JJ.*

C.A.No.3552 of 1989 *9th January, 1992.*

Om Prakash and another ...*Appellants*
v.
Jai Prakash ...*Respondents.*

(A) Benami Transactions (Prohibition) Act (XLV of 1988), Sec.4 - Suit claim or action relating to benami transactions - If can be decreed after coming into force of Act - Persons who had entered into benami transactions before Act - If can be given locus penitentia.

This Court in *Mithilesh Kumari v. Prem Behari Khare, (1989)2 S.C.C. 95,* has already held that the expressions "shall lie" in Sec.4(1) and "shall allow" in Sec.4(2) of the Benami Act are prospective and shall apply to present (future stages) and future suits, claims or actions only. The expression "any property held benami" is not limited to any particular time, date or duration. In a suit for recovery of benami property if any appeal is pending on the date of coming into force of Sec.4, the appellate court can take into account the subsequent legislative changes. In that case, this Court considered the 130th report of the Law Commission submitted to the Government on August 14, 1988. Benami Transaction (Prohibition) Bill, 1988 was drafted after getting the report and the Bill was introduced in the Rajya Sabha on August 1, 1988 and then the Bill was passed. The Law Commission's view was that the legislation replacing the Ordinance should be retrospective in operation and that no *locus penitentia* need be given to persons who had entered in the benami transaction in the past. The court is not convinced to take a different view from that already taken by this Court in *Mithilesh Kumari v. Prem Behari Khare, (1989)2 S.C.C. 95.* *[Paras 6 and 7]*

(B) Benami Transactions (Prohibition) Act (XLV of 1988), Sec.4 - Prohibition on suit, claim or action - Special leave petition under Art.136 filed before coming into force of Act but special leave granted after coming into force of the Act - Appeal, it must be treated as pending on date of coming into force of the Act - Appeal if prohibited - (Constitution of India (1950), Art.136).

Special leave petition was filed against the judgment of the High Court on March 15, 1988 and special leave was granted on August 2, 1989 after hearing both the parties. In the present case, the defendants having lost in High Court could have approached this Court only through a special leave petition under Art.136 of the Constitution and it is only after the grant of such special leave that the appeal could be heard. Though the special leave might have been granted subsequently on August 21, 1989, but it is a fact that the judgment and decree of the High Court had already been challenged by the defendant-appellants and it cannot be said that no appeal was pending before this Court simply on the ground that only special leave petition was pending when the Benami Act came into force. There is a clear prohibition under Sec.4 of the Benami Act that no suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property. It is well settled that an appeal is a continuation of suit and in the present case, the appeal was pending before this Court. There is no manner of dispute that the present suit had been filed by the plaintiff-respondent claiming that he was the real owner of the property and the names of the defendant-appellants were mentioned in the sale deeds as benami. Sec.4 is a total prohibition against any suit based on benami transaction and the plaintiff-respondent is not entitled to get any decree in such suit or in appeal. *[Para 9]*

Cases referred to:

Mithilesh Kumari v. Prem Behari Khare, (1989)2 S.C.C. 95.

J.P.Goyal, Senior Advocate (*R.C.Verma, M.R.Bidsar* and *K.K.Gupta,* Advocates, with them), for Appellants.

O.P.Rana, Senior Advocate (*Girish Chandra,* Advocate with him), for Respondent.

The Judgment of the court was delivered by

Kasliwal, J.:- This appeal by Special leave is directed against the judgment of Allahabad High Court dated November 24, 1987. The plaintiff-respondent filed a suit on the ground that the land purchased through four sale deeds dated June 10, 1968, June 21, 1968, January 17, 1976 and June 23, 1977 were purchased by him alone and he was the real owner of said land. The name of the defendant-appellants were included in the said

sale deeds only as benamidar. The defendant-appellants took the plea that they had paid their part of the sale consideration and the land was jointly purchased in the name of both the parties. It may be noted that the defendant-appellant Om Prakash and plaintiff-respondent Jai Prakash are brothers and defendant-appellant 2 Smt.Satyawati is the wife of appellant Om Prakash. It has come on record that appellant 1 Om Prakash was in government service ever since 1953 and the plaintiff-respondent was looking after the entire agricultural property in the village. Consolidation proceedings also took place in the village and during the consolidation operation partition had been effected in the revenue records and chaks had been carved out in accordance with the share of the parties. At that time no dispute was raised by the plaintiff-respondent that he was owner of the entire property and the names of defendant-appellants were wrongly mentioned as benami.

2. The learned trial court arrived at the conclusion that the names of the defendant-appellants in the sale deeds were not mentioned as benamidars and further held that the claim of the plaintiff-respondent could not be accepted as no objection had been taken by him even during the consolidation proceedings. The suit as such was dismissed by the trial court by judgment dated January 24, 1987. The plaintiff aggrieved against the judgment of the trial court, filed an appeal. The first appellate court reversed the judgment and decree of the trial court and decreed the suit in favour of the plaintiff. The second appeal filed by the defendants was dismissed by the High Court. The defendants aggrieved against the judgment and decree of the High Court filed special leave petition before this Court on March 15, 1988. During the pendency of the special leave petition, the Benami Transactions (Prohibition of the Right to Recover Property) Ordinance, 1988 was promulgated by the President of India on May 19, 1988. The said Ordinance was replaced by the Benami Transactions (Prohibition) Act, 1988 (hereinafter called the 'Benami Act'). The Act received the assent of the President of India on September 5, 1988. The defendants filed an application on May 1, 1989 for allowing them to take additional grounds made available on the basis of the aforesaid 'Benami Act'. Thereafter special leave was granted by this Court by order dated August 21, 1989 and it was directed that printing of record is dispensed with and appeal will be heard on the special leave petition paper books. The parties were given liberty to file additional documents if any within four weeks and the appeal was directed to be listed on December 13, 1989 for hearing. Pending disposal of the appeal, the parties were directed to maintain *status quo* as existing on that day.

3. In the above circumstances, the matter came up for hearing before us.

4. Though there is no specific order of this Court allowing the application dated May 1, 1989 filed by the appellants for raising additional grounds, the same shall be deemed to have been allowed as the special leave petition was granted subsequently on August 21, 1989 after hearing both the parties. In any case, we further make it clear that we had permitted the defendant/appellants to argue additional grounds made available to them under the 'Benami Act', which admittedly came into force after the filing of the special leave petition in this Court.

5. Learned counsel appearing on behalf of the defendant-appellants had contended that the suit filed by the plaintiff-respondent was not maintainable and barred under Sec.49 of the U.P.Consolidation of Holdings Act, 1954 as the point regarding the land in question being benami was never raised by the plaintiff-respondent during consolidation proceedings and the chaks were allowed to be recorded in the name of the defendant-appellants. So far as this objection under Sec.49 of the U.P. Consolidation of Holdings Act is concerned, no foundations were laid in the written statement nor any issue was raised. The High Court was thus right in holding that in the facts of this case, no foundation had been laid for the applicability of Sec.49 of the U.P.Consolidation of Holdings Act. We see no error in the order of the High Court in taking the aforesaid view and we also hold that the defendant-appellants cannot be allowed to take such plea for which no foundation was laid in the pleadings.

6. The next important and formidable question which arises for consideration is whether any suit relating to benami transactions can be decreed after the coming into force of the Benami Act. This Court in *Mithilesh Kumari v. Prem Behari Khare, (1989)2 S.C.C. 95,* has already held that the expressions "shall lie" in Sec.4(1) and "shall allow" in Sec.4(2) of the Benami Act are

prospective and shall apply to present (future stages) and future suits, claims or actions only. The expression "any property held benami" is not limited to any particular time, date or duration. In a suit for recovery of benami property if any appeal is pending on the date of coming into force of Sec.4, the appellate court can take into account the subsequent legislative changes. Sec.4 of the Benami Act reads as under:

"4. (1) No suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property.

(2) No defence based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property."

7. In the case of *Mithilesh Kumari v. Prem Behari Khare, (1989)2 S.C.C. 95,* this Court considered the 130th report of the Law Commission submitted to the government on August 14, 1988. Benami Transactions (Prohibition) Bill, 1988 was drafted after getting the report and the Bill was introduced in the Rajya Sabha on August 31, 1988 and then the Bill was passed. The Law Commission devoted several pages to justify retrospective legislation and its view was that the legislation replacing the Ordinance should be retrospective in operation and that no *locus penitentia* need be given to the persons who had entered in the benami transaction in the past. Learned counsel appearing for the respondent was unable to convince us to take a different view from that already taken by this Court in *Mithilesh Kumari v. Prem Behari Khare, (1989)2 S.C.C. 95.*

8. It was vehemently contended by the learned counsel for the plaintiff-respondent that even if the ratio of *Mithilesh Kumari v. Prem Behari Khare, (1989)2 S.C.C. 95,* is applied, it can be made available only in a case where appeal was pending before the higher court. It was contended that in the present case, only special leave petition filed on March 15, 1988 was pending at the time when the Benami Act came into force. It was pointed out that the Ordinance was promulgated on May 19, 1988 and the Benami Act received the assent of the President on September 5, 1988. It was thus contended that no appeal was pending on May 19, 1988 or September 5, 1988 as the special leave was granted much after on August 21, 1989 and thus no advantage can be taken by the defendant- appellants of Sec.4 of the Benami Act as no appeal was pending on the date when the Benami Act came into force.

9. We find no force in the above contention of the learned counsel for the plaintiff-respondent. Special leave petition was filed against the judgment of the High Court on March 15, 1988 and special leave was granted on August 21, 1989 after hearing both the parties. In the present case, the defendants having lost in High Court could have approached this Court only through a special leave petition under Art.136 of the Constitution and it is only after the grant of such special leave that the appeal could be heard. Though the special leave might have been granted subsequently on August 21, 1989 but it is a fact that the judgment and decree of the High Court had already been challenged by the defendant-appellants and it cannot be said that no appeal was pending before this Court simply on the ground that only special leave petition was pending when the Benami Act came into force. There is a clear prohibition under Sec.4 of the Benami Act that no suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property. It is well settled that an appeal is a continuation of suit and in the present case the appeal was pending before this Court. There is no manner of dispute that the present suit had been filed by the plaintiff- respondent claiming that he was the real owner of the property and the names of the defendant- appellants were mentioned in the sale deeds as benami. In our view, Sec.4 of the Benami Act is a total prohibition against any suit based on benami transaction and the plaintiff-respondent is not entitled to get any decree in such suit or in appeal.

10. As a result of the above discussion, we allow this appeal, set aside the judgment and decree of the High Court and dismiss the suit. In view of the fact that the suit is dismissed on account of legislative change brought about during the pendency of the appeal in this Court, there would

be no order as to costs.

B.S. ------ *Appeal allowed.*

IN THE SUPREME COURT OF INDIA.

Present:- *T.K.Thommen* and *N.M.Kasliwal, JJ.*

C.A.No.3654 of 1991 *21st January, 1992.*

G.Arunachalam (Dead) through L.Rs. and another ...*Appellants*
v.
Thondarperienambi and another ....*Respondents.*

Tamil Nadu Buildings (Lease and Rent Control) Act (XVIII of 1960), Sec.10(2)(iii) - Acts of waste likely to impair value or utility of building - Tenant replacing front door of wooden planks by rolling shutter not removing wooden frames - Lowering the front portion of the floor by 17 cms. for fixing the rolling shutter - Cutting down carefully the stone steel plate at the top of the basement and refixing at the new level for lowering the floor level - Commissioner appointed to report about the acts giving opinion that the acts did not appear in any way to affect stability or the value of the building - Acts held not acts of waste entailing eviction of tenant.

The respondents filed an eviction petition against the appellants under Sec.10(2)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, on the ground that he had committed acts of waste likely to impair materially the value or the utility of the building. The first appellate court appointed a Commissioner to submit a report about the alterations and based on the report of the Commissioner held that there was no evidence to show that the tenants had committed any acts of waste. In revision, however, the High Court reversed that finding. In appeal to Supreme Court, *Held:-* The High Court ought not to have reversed the finding rendered by the first appellate Court which was based on the facts found by the Engineer-Commissioner. The Commissioner as an expert had submitted a detailed report. That report shows that the alterations effected by the tenants did not come within the ambit of Sec.10(2)(iii) which is the only provision on the basis of which the landlords sought eviction of the tenants. *[Para 2]*

The Judgment of the Court was delivered by *Thommen, J.:-* This appeal is brought by the tenants against the order of the Madras High Court in C.R.P.No.358 of 1985 allowing the landlords' petition and reversing the finding of the first appellate court. The High Court held that the ground of eviction under Sec.10(2)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (the "Act") was attracted by the facts of the case and the tenants were liable to be evicted. The first appellate court had, however, found that there was no evidence to show that the tenants had "committed or caused to be committed such acts of waste as are likely to impair materially the value or utility of the building" so as to attract the ground mentioned in Sec.10(2)(iii). This finding was rendered on the basis of a report submitted by an Assistant Engineer of the P.W.D., who was appointed by the trial court as a Commissioner to submit a report about the alterations alleged to have been made by the tenants in the building. The Commissioner stated:

"* * *

3. The front door formerly of wooden planks has been replaced by rolling shutters, but the wooden frames have not been removed. For fixing the rolling shutter the party has lowered the front portion of the floor by 17 cms. For lowering this floor level the stone steel plate at the top of the basement has been cut down carefully, and refixed at the new level (*i.e.*) 17 cm. below the original floor level. This does not appear in any way to affect the stability or the value of the building.

4. In the two sides of the shop, two pillars of brick masonry (23 cm. x 15 cm.) in cement mortar have been provided with steel channel to withstand the reaction of the rolling shutters during operation.

5. It is also noted that the top of the rolling shutters does not touch the original beam spanning the front opening. The rolling shutter moves in the grooves provided in the new masonry construction at the sides. The top beam of the rolling shutter is only supported on the newly constructed brick pillars. So this also will not impair the stability or value of the building.

6. On inspection no damage is seen anywhere in the structure.

7. In conclusion, I am of the opinion that due to

these structural alterations the value or the stability of the scheduled building have not materially impaired........"

On the basis of this report, the first appellate court, reversing the order of the Rent Controller and allowing the appeal of the tenants, held that no waste had been committed by the tenants which was likely to impair materially the value or utility of the building, so as to attract the provisions of Sec.10(2)(iii). This is what the learned Sub-Judge stated:

".....From the above it is wrong to say that by the material alterations done by the respondents/appellants the material value and utility of the petition building has been impaired and hence I decide this issue in favour of the appellants/respondents........"

2. However, by the impugned judgment the High Court reversed the finding of the first appellate Court. In our view, the High Court ought not to have reversed the finding rendered by the first appellate court which was based on the facts found by the Engineer-Commissioner. The Commissioner as an expert had submitted a detailed report, material portions of which we have extracted above. That report shows that the alterations effected by the tenants did not come within the ambit of Sec.10(2)(iii) which is the only provision on the basis of which the landlords sought eviction of the tenants. The decisions relied on by the High Court do not support the conclusion to which it came by reason of the facts found by the first appellate court and fully supported by the report of the Commissioner.

3. Having heard counsel on both sides and considered the judgments of the courts below, and having considered the observations of the Commissioner, we are of the view that the High Court was not justified, in exercise of its revisional powers under Sec.25 of the Act, in interfering with the judgment of the first appellate court.

4. The appeal is allowed in the above terms but under the circumstances of the case we make no order as to costs.

B.S. ---- *Appeal allowed.*

IN THE SUPREME COURT OF INDIA.

Present:- *Ranganath Mishra, C.J., M.H.Kania* and *Kuldip Singh, JJ.*

C.A.Nos.4568 and 4686 of 1991

22nd November, 1991.

Union of India and another ...*Appellants*

v.

Zora Singh and others ...*Respondents.*

(A) Interpretation of Statutes - Retrospectivity - Act substantive in nature - Can be prospective only, unless intention of Legislature was to give retrospective effect to it.

Under the well-settled rules of interpretation, the provisions of an Act being substantive in nature can have only prospective application unless the language in which the provisions are couched, read in the context, shows that the intention of the Legislature was to give retrospective effect to them. *[Para 12]*

(B) Land Acquisition Act (I of 1894), Sec.23(1-A) (as inserted by Amendment Act (LXVIII of 1984), read with Sec.30(1)(a) of Amendment Act (1984) - Word 'Court' - Word 'Collector' cannot be read in the place of 'Court' - Additional amount calculated in manner indicated by Sec.23(1-A) - Payable in cases where Collector had not made his award on or before April 30, 1982 even in cases where the court might have made its award before September 24, 1984.

The expression 'award' used in Sec.23(1-A) suggests that the intention of the Legislature was to make the provisions of the said subsection applicable to cases where the Collector had yet to make his award or the trial court hearing the reference under Sec.18 of the Land Acquisition Act had still to make its award after coming into force of the said sub-section on September 24, 1984. The expression 'award' is to be distinguished from the expression 'decree' and hence it appears that in the absence of any contrary or inconsistent provision in the said Act the provisions of sub-section would not come into play where the award had been made by the Collector earlier as well as by the reference court but on the date of coming into effect of the said sub-section, an appeal from the said award might have been pending in a court. In that case, the court would not be 'awarding' any

amount but would be making a 'decree' for an amount. By reason of the provision of Sec.30(1)(a) of the Amendment Act of 1984, the provisions of Sec.23(1-A) of the said Act were, by a deeming provision, made also applicable to every proceeding for the acquisition of land under the said Act where the Collector had not made his award by April 30, 1982. On a correct interpretation of the provisions of Sec.23(1-A) read with Sec.30(1)(a) of the Amendment Act of 1984, an additional amount calculated in the manner indicated in Sec.23(1-A) is also payable in those cases where the Collector had not made his award on or before April 30, 1982 even in cases where the court might have made its award before September 24, 1984. Sec.23(1-A) refers clearly to the duties of the court. The court is defined in Sec.3(d) as the Principal Court of Original jurisdiction, except in the circumstances set out in the said sub-section which would be the court having jurisdiction to decide the reference under Sec.18 of the said Act. There is, therefore, no warrant to read in the place of the word 'court' in Sec.23(1-A) the word 'Collector'. Moreover, the decision of such a court determining compensation is regarded as an award under the said Act. In the light of these provisions, there is no warrant to give an unduly restricted meaning to Sec.23(1-A) of the said Act. On the plain language of Sec.23(1-A) itself, the duty was cast on the court to award an additional amount calculated as prescribed therein which would mean that it is directed to be awarded by the court, namely, the reference court, in all cases which are pending before that court on September 24, 1984. Sub-sec.(1)(a) of Sec.30 undoubtedly lays down that the provisions of Sec.23(1-A) of the Act are also made applicable to all proceedings for the acquisition of any land under the said Act pending on April 30, 1982 where no award had been made by the Collector before that date. At first glance, this would appear to suggest that the additional amount referred to in Sec.23 (1-A) could not be awarded where the Collector had made his award before April 30, 1982. But this provision cannot be allowed to cut down the benefits available to the claimants on a plain reading of Sec.23(1-A).

[Paras 13, 14, 15 and 18]

Cases referred to:

State of Punjab v. Krishan Lal, A.I.R. 1987 P.& H. 222: (1987)91 Punj.L.R. 688: 1987 Punj.L.J. 335; Maya Devi v. Union Territory of Chandigarh, 1988 Punj.L.J. 189; Union of India v. Filip Tiago Degama of Vedem Vaseo De Gama, (1990)1 S.C.C. 277; Jaiwant Laxman P.Sardesai v. Government of Goa, Daman and Diu, A.I.R. 1987 Bom. 214: (1987)89 Bom.L.R. 111: 1987 Mah.L.J. 564; Union of India v. Raghubir Singh, (1989)2 S.C.C. 754; Kamalajammaniavaru v. Special Land Acquisition Officer, (1985)1 S.C.C. 582; Bhag Singh v. Union Territory of Chandigarh, (1985)3 S.C.C. 737.

M.Chandra Sekhar, Additional Solicitor General, *G.L.Sanghi, Harbans Lal, Har Dev Singh, S.P.Goyal*, Senior Advocates (*Harinder Pal Singh, Ms.Naresh Bakshi, S.M.Sarin, P.N.Puri, M.K.Dua, Ms.Madhu Moolchandani, Manoj Swarup, Dr.(Ms)Meera Agarwal, R.C.Mishra, M.N.Krishnamani, K.P.Sunder Rao, Attar Singh, S.N.Terdal, Heant Sharma, T.C.Sharma, N.D.Garg, Ms.Kusum Chowdhary* and *S.P.Sarin*, Advocates with them), for Appearing Parties.

The Judgment of the Court was delivered by

Kania, J.:- Leave granted. Counsel heard.

2. As the controversy before us is a limited one and relates only to the question of granting of benefit of the provisions of Sec.23(1-A) introduced into the Land Acquisition Act, 1894 (hereinafter referred to as "the said Act") by the Land Acquisition (Amendment) Act, 1984, (referred to hereinafter as "the Amendment Act of 1984") only a few facts are necessary for the appreciation of the submissions made before us.

3. This appeal, arising out of S.L.P. (Civil) No.14297 of 1990 by special leave, is directed against the judgment of a Division Bench of the Punjab and Haryana High Court in Letters Patent Appeal No.1251 of 1987. The other appeals before us are connected appeals filed by the Union of India or the claimants. The respondent was the owner of a piece of land in one of the villages in District Bhatinda in Punjab. Land admeasuring 74,375 acres situated in various villages in Bhatinda District including the land of the respondent was acquired by the appellants under the said Act.

4. The Notifications under Secs.4 and 6 of the said Act were published on May 10, 1979 and March 27, 1981, respectively. The Special Land Collector made and declared his award of compensation in respect of the acquisition of the said land and several other plots of land on March 31, 1981. Being aggrieved by the said award, the respondent and other landowners filed reference applications under Sec.18 of the said Act which were decided by

the learned District Judge concerned in 1985 and 1986. The land acquired was classified into various grades and compensation awarded accordingly. In the case before us and several other similar cases the benefits under Sec.23(1-A) of the said Act were granted to the land owners. The State appealed to the High Court. In several other cases where the land owners were not satisfied with the compensation awarded, including the cases where the benefits conferred by Sec.23(1-A) were not awarded the land owners filed appeals before the High Court.

5. What is relevant for our purpose is that a learned Single Judge of the High Court confirmed the grant of benefits under Sec.23(1-A) of the said Act where such benefits had been granted by the learned District Judge and awarded the same where that had not been done by the learned District Judge. Letters patent appeals were filed by the State being dissatisfied with the judgment of the learned Single Judge.

6. It was submitted on behalf of the Union of India before the Division Bench deciding the letters patent appeals that the claimants/land owners were not entitled to the benefit of Sec.23(1-A) of the said Act introduced by the said Amendment Act, 1984 as aforestated. It was submitted on behalf of the appellants that the right to get additional amount at the rate of 12 per cent per annum on the enhanced amount of compensation from the date of Notification under Sec.4 of the said Act and till the date of the award of the Collector or the date of taking possession whichever is earlier conferred under the provisions of Sec.23(1-A) of the said Act was available only in cases where the Collector made his award after April 30, 1982, being the date of the introduction of Land Acquisition (Amendment) Bill, 1982 in the House of the People, whereas in the present case, the Collector had made his award on March 31, 1981. Reliance was placed on the judgment of a Full Bench of the Punjab and Haryana High Court in *State of Punjab v. Krishan Lal, A.I.R. 1987 P. & H. 222: (1987)91 Punj.L.R. 688: 1987 Punj.L.J. 335.* The Division Bench repelled this contention and pointed out that the learned Chief Justice H.N.Seth, who spoke for the Full Bench in *State of Punjab v. Krishan Lal, A.I.R. 1987 P. & H. 222: (1987)91 Punj.L.R. 688: 1987 Punj.L.J. 335,* had explained that judgment in the subsequent decision rendered in *Maya Devi v. Union Territory of Chandigarh, 1988 Punj.L.J. 189,* and pointed out that the land owner was entitled to the additional amount in terms of Sec.23(1-A) of the Amendment Act of 1984 if the proceedings for determination of compensation were decided after September 24, 1984, and since the regular first appeal in respect of the proceedings for determination of the compensation was decided after September 24, 1984, the court while adjudicating upon the amount of compensation payable to the claimant was bound to grant the additional amount in terms of Sec.23(1-A) of the said Act. The Division Bench in its impugned judgment gave to the claimant the benefit of the added amount referred to in Sec.23(1-A) of the said Act. The same submissions have been made on behalf of the respective parties before us.

7. Before discussing the submissions of the respective parties, it would not be out of place to set out the relevant provisions of the said Act.

8. The said Act, namely, the Land Acquisition Act, 1894, provides for compulsory acquisition of land. The term 'award' has not been defined in the said Act. Sub-clause (d) of Sec.3, the definition section, defines the expression 'court' as follows:

> "3.(d) the expression 'court' means a principal Civil Court of original jurisdiction, unless the appropriate Government has appointed (as it is hereby empowered to do) a special judicial officer within any specified local limits to perform the functions of the court under this Act."

Part II of the said Act deals with the question of acquisition of land. Sec.11 of the said Act deals with the enquiry and award of compensation by the Collector. Sec.11-A which was introduced into the said Act by the Land Acquisition (Amendment) Act, 1984 (Act 68 of 1984) provides for the period within which the award shall be made. Generally speaking, it prescribes that the period for making the award is limited to two years, and the section provides that, if the award is not made within the period, the entire proceedings for acquisition of land shall lapse. There is a proviso to the said section and an Explanation, but it is not necessary to consider the same for the purpose of this case. Sub-sec.(1) of Sec.18 which is included in Part III of the said Act runs as follows:

> "18. *Reference to Court:* (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for

the determination of the court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested."

Sec.23 deals with the matters to be considered by the court for determining the compensation to be awarded for the land acquired under the said Act. We may mention here that under the general scheme of the said Act, the land owner whose land has been acquired is entitled to be paid the market value of the land acquired as prevailing at the time of the publication of the notification under Sec.4 issued together with the solatium at the prescribed rate in consideration of the compulsory nature of the acquisition. Prior to the coming into effect of the Amendment Act of 1984 solatium was fixed at the rate of 15 per centum. Sub-sec.(1-A) which was introduced into Sec.23 of the said Act by the Amendment Act of 1984 runs as follows:

"23(1-A): In addition to the market value of the land, as above provided, the court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market value for the period commencing on and from the date of the publication of the notification under Sec.4, sub-sec.(1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier."

9. By the said Amendment Act of 1984 the expression "30 per centum" was substituted in place of the expression "15 per centum" in sub-sec.(2) of Sec.23 of the said Act. Sub-sec.(2) of Sec.23 now runs as follows:

"23.(2) In addition to the market value of the land, as above provided, the court shall in every case award a sum of thirty per centum on such market value, in consideration of the compulsory nature of the acquisition."

10. These amendments were effected in the Land Acquisition Act (the said Act) by the Land Acquisition (Amendment) Act, 1984, ("the Amendment Act of 1984") as set out earlier. Sub-secs.(1) and (2) of Sec.30 of the Amendment Act of 1984 run as follows:

"30. *Transitional provisions*:- (1) The provisions of sub-sec.(1-A) of Sec.23 of the principal Act, as inserted by clause (a) of Sec.15 of this Act, shall apply and shall be deemed to have applied, *also to*, and in relation to,--

(a) every proceeding for the acquisition of any land under the principal Act pending on the thirtieth day of April, 1982 the date of introduction of the Land Acquisition (Amendment) Bill, 1982, in the House of the People, in which no award has been made by the Collector before that date;

(b) every proceeding for the acquisition of any land under the principal Act commenced after that date, whether or not an award has been made by the Collector before the commencement of this Act.

(2) The provisions of sub-sec.(2) of Sec.23 and Sec.28 of the principal Act, as amended by clause (b) of Sec.15 and Sec.18 of this Act respectively, shall apply, and shall be deemed to have applied, also to, and in relation to, any award made by the Collector or court or to any order passed by the High Court or Supreme Court in appeal against any such award under the provisions of the principal Act after the thirtieth day of April, 1982, the date of introduction of the Land Acquisition (Amendment) Bill, 1982, in the House of the People and before the commencement of this Act." (*emphasis supplied by us*).

11. On behalf of the appellants reliance was placed by learned counsel on the decision of this Court in *Union of India v. Filip Tiago De Gama of Vedem Vasco De Gama, (1990)1 S.C.C. 277.* The respondent, on the other hand, placed strong reliance on the decision of a Full Bench of the Bombay High Court in *Jaiwant Laxman P.Sardesai v. Government of Goa, Daman and Diu, A.I.R. 1987 Bom. 214: (1987)89 Bom.L.R. 111: 1987 Mah.L.J. 564.* On the basis of the aforesaid judgment of the Bombay High Court it was submitted by the respondent/claimant that a wide and liberal interpretation should be given to the provisions of sub-sec.(1-A) of Sec.23 and the amount calculated as set out in the said sub-section awarded in all cases where any proceeding was pending in any court including the High Court or this Court in connection with the determination of compensation for the land acquired. We may mention that both the parties referred us to the decision of a Constitution Bench of this Court in *Union of India v. Raghubir Singh, (1989)2 S.C.C. 754.* We propose to discuss these decisions a little later but before doing so, we propose to analyse the relevant

provisions of the said Act and the effect thereof.

12. A perusal of the provisions of sub-sec.(1-A) of Sec.23 makes it clear that the said sub-section deals with substantive rights and it confers a substantive right to claim the additional amount calculated as set out in the said sub-section in the circumstances set out therein. Similarly, sub-sec.(2) of Sec.23 also confers a substantive right on the claimant to a higher solatium. Under the well settled rules of interpretation, the said provisions of the said Act, being substantive in nature can have only prospective application unless the language in which the provisions are couched, read in the context, shows that the intention of the legislature was to give retrospective effect to them. The language of sub-sec.(1-A) of Sec.23 shows that a duty is cast on the *court to award* an amount calculated as stated therein in addition to the market value of the land acquired for the period commencing from the date of the publication of the Sec.4 Notification to the date of the *award* of the Collector or the date of taking possession, whichever is earlier. *[emphasis supplied]*

13. The expression 'award' used in Sec.23(1-A) suggests that the intention of the legislature was to make the provisions of the said sub-section applicable to cases where the Collector had yet to make his award or the trial court hearing the reference under Sec.18 of the Land Acquisition Act had still to make its award after coming into force of the said sub-section on September 24, 1984. The expression 'award' is to be distinguished from the expression 'decree' and hence, it appears that in the absence of any contrary or inconsistent provision in the said Act the provisions of sub-section would not come into play where the award had been made by the Collector earlier as well as by the reference court but on the date of coming into effect of the said sub-section, an appeal from the said award might have been pending in a court. In that case, the court would not be '*awarding*' any amount but would be making a '*decree*' for an amount.

14. By reason of the provision of Sec.30(1)(a) of the Amendment Act of 1984, the provisions of Sec.23(1-A) of the said Act were, by a deeming provision, made also applicable to every proceeding for the acquisition of land under the said Act whether the Collector had not made his award by April 30, 1982. On a correct interpretation of the provisions of Sec.23(1-A) read with Sec.30(1)(a) of the Amendment Act of 1984, an additional amount calculated in the manner indicated in Sec.23(1-A) is also payable in those cases where the Collector had not made his award on or before April 30, 1982 even in cases where the court might have made its award before September 24, 1984.

15. It is true that the aforesaid construction we are giving to the provisions of Sec.23(1-A) and Sec.30(1)(a) will, in a sense, limit the benefits strictly conferred by Sec.30(1)(a) to only those cases where the Collector as well as the court have made their respective awards between April 30, 1982 ad September 24, 1984 but, in our view, that cannot be helped as that is the result of the plain grammatical construction of the clear language used in the relevant provisions. We are of the opinion that we would not be justified in giving an unduly restricted meaning to the provisions of Sec.23(1-A) unwarranted by the plain language of that sub-section as appears to have been done in the case of *Union of India v. Filip Tiago De Gama of Vedem Vasco De Gama, (1990)1 S.C.C. 277,* discussed more particularly hereinafter, in order to give a wider meaning of the provisions of Sec.30(1)(a). Sec.23(1-A) refers clearly to the duties of the *court*. As we have already pointed out, the court is defined by Sec.3(d) as the principal court of original jurisdiction, except in the circumstances set out in the said sub-section which would be the court having jurisdiction to decide the reference under Sec.18 of the said Act. There is, therefore, no warrant to read in the place of the word 'court' in Sec.23(1-A) the word 'Collector'. Moreover, the decision of such a court determining compensation is regarded as an award under the said Act. In the light of these provisions, there is no warrant to give an unduly restricted meaning to Sec.23(1-A) of the said Act, as pointed out above.

16. Coming now to the decisions cited before us we find that in the case before the Full Bench of the Bench of the Bombay High Court in *Jaiwant Laxman P.Sardesai v. Government of Goa, Daman and Diu, A.I.R. 1987 Bom. 214: (1987)89 Bom.L.R. 111: 1987 Mah.L.J. 564,* the facts were that the Notification under Sec.4 of the said Act was published on October 3, 1969, in the Government Gazette of the Government of Goa. The Notification under Sec.6 was published on June 10, 1971. The Land Acquisition Officer declared his award on August 2, 1972. All these events undoubtedly occurred prior to April 30, 1982. However, on a reference

made under Sec.18 of the said Act on December 24, 1973, the civil court investigated the claim and gave its award on June 24, 1985. The award was, therefore, made by the court not before April 30, 1982, but after September 30, 1984, when the provisions of the Land Acquisition (Amendment) Act, 1984, had already come into effect. It was, therefore, strictly speaking, not necessary for the court to make any observation regarding the legal position in a case where both the Collector as well as the court in a reference under Sec.18 had made their respective awards before April 30, 1982. Moreover, we find that the judgment appears to proceed on a somewhat unwarranted assumption. This is clear from the following observations which appear at paragraph 5 of the aforesaid report: (A.I.R. p. 217)

> "It is not in dispute that where on the date of the commencement of the amending Act any proceedings for determination of compensation were pending before the Collector under Sec.11 of the Act or before the court under reference under Sec.18 of the Act or before the High Court in appeal under Sec.54 of the Act, then the amended Sec.23(1-A) would be applicable to such proceedings, in absence of sub-sec.(1) of Sec.30."

17. In our view, it was erroneously taken as undisputed that had the provisions of sub-sec.(1) of Sec.30 not been in existence, the provisions of the amended Sec.23(1-A) would have applied to a case where the Collector as well as the court had already made their award before April 30, 1982, but an appeal was pending in the High Court on April 30, 1982, or on the commencement of the Land Acquisition (Amendment) Act. As we have already pointed out, the correctness of this assumption is very much in dispute before us. In these circumstances, we find ourselves unable to accept as correct the view taken by the Full Bench of the Bombay High Court to the extent that it extends the operation of the provisions of Sec.23 (1-A) even to cases where the Collector as well as the reference court had made their awards before April 30, 1982, in the case before the Full Bench of the Bombay High Court in *Jaiwant Laxman P.Sardesai v. Government of Goa, Daman and Diu, A.I.R. 1987 Bom. 214: (1987)89 Bom.L.R. 111: 1987 Mah.L.J. 564.*

18. As far as the decision of a Division Bench comprising two learned Judges of this Court in *Union of India v. Filip Tiago De Gama of Vedem Vasco De Gama, (1990)1 S.C.C. 277,* strongly relied upon by the appellants is concerned, we find that in that case the Land Acquisition Officer made his award determining the compensation on March 5, 1969. On a reference under Sec.18 the Civil Court made its award on May 28, 1985, that is, even after September 24, 1984, when the Amendment Act of 1984 came into effect. The view taken by the Division Bench is that, as the Collector had made his award before April 30, 1982, then the additional amount referred to in Sec.23(1-A) could not be awarded. This view has been taken on the basis that sub-sec.(1)(b) of Sec.30 of the said Act provides that the provisions of Sec.23(1-A) shall be applicable to every acquisition proceeding commenced after April 30, 1982, irrespective of the fact whether the Collector has made the award on or before September 24, 1984, and that sub-sec.(1) of Sec.30 does not refer to court award and the court award is used only in sub-sec.(2) of Sec.30. (See para.21 of the said report). We find that on the plain language of Sec.23(1-A) itself, which we have set out earlier, the duty was cast on the court to award an additional amount calculated as prescribed therein which would mean that it is directed to be awarded by the court, namely, the reference court, in all cases which are pending before that court on September 24, 1984. Sub-sec.(1)(a) of Sec.30 undoubtedly lays down that the provisions of Sec.23(1-A) of the Act are also made applicable to all proceedings for the acquisition of any land under the said Act pending on April 30, 1982 where no award had been made by the Collector before that date. At first glance, this would appear to suggest that the additional amount referred to in Sec.23 (1-A) could not be awarded where the Collector had made his award before April 30, 1982. But this provision cannot be allowed to cut down the benefits available to the claimants on a plain reading of Sec.23(1-A). This is clear from the use of the word "also" in the opening part of Sec.30(1). In our opinion, the view taken by the bench comprising two learned Judges of this Court in that case cannot be accepted as correct as it is too narrow and unduly cuts down the operation of the benefit conferred under the plain language of Sec.23(1-A) of the said Act. As far as the provisions of Sec.30(2) are concerned, we do not feel that we are called upon to interpret the same in

this decision. In our view, therefore the said decision cannot be accepted as good law insofar as it lays down that in order to bring the provisions of Sec.23(1-A) of the said Act into play the Collector must have made his award after April 30, 1982.

19. Coming to the decision in *Union of India v. Raghubir Singh, (1989)2 S.C.C. 754,* referred to earlier, we find that it mainly concerned itself with the provisions of Sec.30(2) of the said Amendment Act with which we are not directly concerned here and in that connection, the Constitution Bench of this Court has made the following observations:

"In construing Sec.30(2), it is just as well to be clear that the award made by the Collector referred to here is the award made by the Collector under Sec.11 of the parent Act, and the award made by the Court is the award made by Principal Civil Court of Original Jurisdiction under Sec.23 of the parent Act on a reference made to it by the Collector under Sec.19 of the parent Act. There can be no doubt that the benefit of the enhanced solatium is intended by Sec.30(2) in respect of an award made by the Collector between April 30, 1982, and September 24, 1984. Likewise the benefit of the enhanced solatium is extended by Sec.30(2) to the case of an award made by the Court between April 30, 1982, and September 24, 1984, even though it be upon reference from an award made before April 30, 1982."

The Court went on to point out that:

"......Sec.30(2) of the Amendment Act extends the benefit of the enhanced solatium to cases where the award by the Collector or by the Court is made between April 30, 1982, and September, 24, 1984, or to appeals against such awards decided by the High Court and the Supreme Court whether the decisions of the High Court or the Supreme Court are rendered before September 24, 1984, or after that date. All that is material is that the *award* by the Collector or by the Court should have been made between April 30, 1982, and September 24, 1984. We find ourselves in agreement with the conclusion reached by this Court in *K.Kamalajammanniavaru v. Special Land Acquisition Officer, (1985)1 S.C.C. 582,* and find ourselves unable to agree with the view taken in *Bhag Singh v. Union Territory of Chandigarh, (1985)3 S.C.C. 737.* The expanded meaning given to Sec.30(2) in the latter case does not, in our opinion, flow reasonably from the language of that subsection. It seems to us that the learned Judges in that case missed the significance of the word 'such' in the collocation 'any such award' in Sec.30(2). Due significance must be attached to that word, and to our mind it must necessarily intend that the appeal to the High Court or the Supreme Court, in which the benefit of the enhanced solatium is to be given, must be confined to an appeal against an award of the Collector or of the Court rendered between April 30, 1982 and September 24, 1984." (*emphasis supplied*).

20. We find that this decision which was rendered by a Constitution Bench of this Court comprising five learned Judges runs in no way counter to the view which we have taken and, in fact, it lends some support to the view which we are taking. In the case before us, as the Reference Court has made its award after September 24, 1984 the benefit of the provisions of Sec.23(1-A) was clearly available to the claimant as held in the impugned judgment.

21. In the result, the appeal arising out of Special Leave Petition (Civil) No.14297 of 1990 in *Union of India v. Zora Singh,* must be dismissed with costs.

22. As far as the other appeals filed by the Union of India which have been heard together with the *Union of India v. Zora Singh,* are concerned, learned counsel for the Union of India has not drawn our attention to any material difference in the relevant facts therein from the facts in *Union of India v. Zora Singh.* In fact, the arguments proceeded on the footing that all the relevant facts were the same as in the case of *Union of India v. Zora Singh.* In a result, all these appeals must also be dismissed, however, with no order as to costs.

23. As far as the appeals before us which have been filed by the claimants are concerned, the same will have to be placed before appropriate benches of this Court for disposal in the light of this decision.

B.S. — *Appeal disposed of.*

IN THE SUPREME COURT OF INDIA.

Present:- *K.Ramaswamy* and *G.N.Ray, JJ.*

C.A.Nos.5054-55 of 1991 *16th December, 1991.*

Dalpat Kumar and another ...*Appellants*
v.
Prahlad Singh and others ...*Respondents.*

Civil Procedure Code (V of 1908), O.39, Rule 1 - Interim Injunction - Grant of - Ambit and scope of - Satisfaction of Court that there is a prima facie case - If sufficient by itself to grant injunction - 'Irreparable injury' - What is - 'Balance of convenience' - How to be found - Suit for setting aside a decree in prior suit - An interim injunction if and when can be granted.

O.39, Rule 1 is primarily concerned with the preservation of the property in dispute till legal rights are adjudicated. Injunction is a judicial process by which a party is required to do or refrain from doing any particular act. It is in the nature of preventive relief to a litigant to prevent possible future injury. In other words the Court, on exercise of the power of granting *ad interim* injunction is to preserve the subject matter of the suit in the *status quo* for the time being. It is settled law that the grant of injunction is a discretionary relief. The exercise thereof is subject to the court satisfying that (1) there is a serious disputed question to be tried in the suit and that on the facts before the Court, there is probability of his being entitled to the relief asked for by the plaintiff/defendant (2) the court's interference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensue before the legal right would be established at trial, and (3) that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it. Therefore, the burden is on the plaintiff by evidence, aliunde by affidavit or otherwise that there is a '*prima facie* case' in his favour which needs adjudication at the trial. The existence of the *prima facie* right and infraction of the enjoyment of his property or the right is a condition for the grant of temporary injunction. *Prima facie* case is not to be confused with *prima facie* title which has to be established on evidence at the trial. Only *prima facie* case is a substantial question raised, *bona fide*, which needs investigation and a decision on merits. Satisfaction that there is a *prima facie* case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the court would result in 'irreparable injury' to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury as dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that the 'balance of convenience' must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject matter should be maintained in *status quo*, an injunction would be issued. Thus, the court has to exercise its sound judicial discretion in granting or refusing the relief of *ad interim* injunction pending the suit. Undoubtedly, in a suit seeking to set aside the decree, the subject matter in the earlier suit, though became final, the court would in an appropriate case grant *ad interim* injunction when the party seeks to set aside the decree on the ground of fraud pleaded in the suit or for want of jurisdiction in the court which passed the decree. But the court would be circumspect before granting the injunction and look to the conduct of the party, the probable injuries to either party and whether the plaintiff could be adequately compensated if injunction is refused. *[Paras 4, 5 or 6]*

A.K.Srivastava, for Appellants.
Anis Ahmed Khan, for Respondents.

The Judgment of the Court was delivered by *K.Ramaswamy, J.*:- Leave granted.

2. Sri S.K.Jain, on his application, is discharged.

3. Heard the counsel on either side. This is the fourth round of litigation relating to the same subject matter. On June 14, 1979 the first

appellant claimed to have entered into an agreement to purchase the residential house situated in Jaipur for a consideration of Rs.51,000. He laid the suit for specific performance and the suit was decreed *exparte*. On August 10, 1983, the sale deed was executed through court. On April 28, 1984, the respondent's wife filed Suit No.83 of 1984 and also sought for temporary injunction from dispossession. In May, 1984, the trial court rejected the application for *ad interim* injunction which was confirmed, on appeal, by the High Court on July 14, 1987. Thereafter the suit was got dismissed for non-prosecution. The first appellant filed Execution Application No.6 of 1985 in which the respondent filed five unsuccessful objections. The first was dismissed on March 4, 1987. The second one on December 4, 1987, which was confirmed on revision by the High Court on January 20, 1988. The third one on October 4, 1987 and fourth one on January 17, 1989. Even thereafter fifth objection was filed on May 23, 1989 which was dismissed on October 24, 1989. This was also confirmed by the High Court in Civil Revision No.109 of 1990, dated August 7, 1990. The third round of litigation was started at the behest of his sons in O.S.No.278 of 1988 claiming to be the joint family property and for a declaration that the sale does not bind them and they sought for partition. They also sought for *ad interim* injunction which was rejected on July 7, 1988. On appeal, the High Court in Misc. Appeal No.177 of 1988 confirmed it by the order dated July 26, 1988. The fourth round of litigation was started by the respondent in filing the present suit on December 7, 1988 pleading, that the first appellant being his counsel played fraud on him, in paragraphs 9 and 10, the details of which are not material for the purpose of this case. He also sought for an interim injunction from dispossession. In the meanwhile a part of the property, namely, shops were obtained symbolical possession by the first appellant. The trial court by order dated November 3, 1990 dismissed the application. On appeal, the High Court in Misc.Appeal Nos. 498 of 1990 and 501 of 1990 by the impugned order dated February 26, 1991 allowed the applications and granted *ad interim* injunction restraining the appellants from taking possession of the residential portion.

4. O.39, Rule 1(c) provides that temporary injunction may be granted where, in any suit, it is proved by the affidavit or otherwise, that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the court may by order grant a temporary injunction to restrain such act or make such other order for the purpose of staying and preventing.....or dispossession of the plaintiff or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the court thinks fit until the disposal of the suit or until further orders. Pursuant to the recommendation of the Law Commission Clause (c) was brought on statute by Sec.86(i)(b) of the Amending Act 104 of 1976 with effect from February 1, 1977. Earlier thereto there was no express power except the inherent power under Sec.151, C.P.C. to grant *ad interim* injunction against dispossession. Rule 1 is primarily concerned with the preservation of the property in dispute till legal rights are adjudicated. Injunction is a judicial process by which a party is required to do or refrain from doing any particular act. It is in the nature of preventive relief to a litigant to prevent future possible injury. In other words the Court, on exercise of the power of granting *ad interim* injunction is to preserve the subject matter of the suit in the *status quo* for the time being. It is settled law that the grant of injunction is a discretionary relief. The exercise thereof is subject to the court satisfying that (1) there is a serious disputed question to be tried in the suit and that on the facts before the court, there is probability of his being entitled to the relief asked for by the plaintiff/defendant; (2) the court's interference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensue before the legal right would be established at trial; and (3) that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it.

5. Therefore, the burden is on the plaintiff by evidence, aliunde by affidavit or otherwise that there is a '*prima facie* case' in his favour which needs adjudication at the trial. The existence of the *prima facie* right and infraction of the enjoyment of his property or the right is a condition for the grant of temporary injunction. *Prima facie* case is not to be confused with *prima facie* title which has to be established on evidence at the trial. Only *prima facie* case is a substantial question raised, *bona fide*, which needs investigation

and a decision on merits. Satisfaction that there is a *prima facie* case by itself is not sufficient to grant injunction. The court further has to satisfy that non-interference by the court would result in 'irreparable injury' to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that the 'balance of convenience' must be in favour of granting injunction. The court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the court considers that pending the suit, the subject matter should be maintained in *status quo*, an injunction would be issued. Thus, the court has to exercise its sound judicial discretion in granting or refusing the relief of *ad interim* injunction pending the suit.

6. Undoubtedly, in a suit seeking to set aside the decree, the subject matter in the earlier suit, though became final, the court would in an appropriate case grant *ad interim* injunction when the party seeks to set aside the decree on the ground of fraud pleaded in the suit or for want of jurisdiction in the Court which passed the decree. But the court would be circumspect before granting the injunction and look to the conduct of the party, the probable injuries to either party and whether the plaintiff could be adequately compensated if injunction is refused. This case demonstrates (we are not expressing any opinion on the plea of fraud or their relative merits in the case or the validity of the decree impugned), suffice to state that the conduct of the respondent militates against the *bona fides*. At present there is a sale deed executed by the court in favour of the first appellant. If ultimately the respondent succeeds at the trial, they can be adequately compensated by awarding damages for use and occupation from the date of dispossession till date of restitution. Repeatedly the civil court and the High Court refused injunction pending proceedings. For any acts of damage, if attempted to be made, to the property, or done, appropriate direction could be taken in the suit. If any alienation is made it would be subject to doctrine of *lis pendens* under Sec.52 of the Transfer of Property Act. The High Court without adverting to any of these material circumstances held that balance of convenience lies in favour of granting injunction with the following observations, "keeping in mind the history, various facts which have been brought to my notice, and looking to the balance of convenience and irreparable loss, I think it will be in the interests of justice to allow these appeals and grant temporary injunction that the appellants may not be dispossessed from the suit property". The phrases "*prima facie* cases" "balance of convenience" and "irreparable loss" are not rhetoric phrases for incantation, but words of width and elasticity, to meet myriad situations presented by men's ingenuity in given facts and circumstances, but always is hedged with sound exercise of judicial discretion to meet the ends of justice. The facts are eloquent and speak for themselves. It is well nigh impossible to find from facts *prima facie* case and balance of convenience. The respondents can be adequately compensated on their success.

7. In our considered view, the High Court committed manifest error of law in jumping to the above conclusion to allow the appeal. This appeal is, accordingly, allowed. The order of the High Court is set aside and that of the trial court is confirmed. It is made clear that any observations made either by the trial court or the High Court or of this Court should be taken to be not relevant at the trial on merits. These are our only *prima facie* observations, subject to adduction of evidence and proof at the trial on merits in the suit. The parties are directed to bear their own costs.

B.S. ---- *Appeal allowed.*

IN THE SUPREME COURT OF INDIA.

Present:- *M.Fathima Beevi* and *S.C.Agrawal, JJ.*

C.A.No.3163 of 1983 *5th March, 1992.*

Smt.Guro ...*Appellant*
v.
Atma Singh and others ...*Respondents.*

Succession Act (XXXIX of 1925), Sec.63. - Will - Proof of - Mode of - Onus of Proof.
With regard to proof of a Will, the law is well-settled that the mode of proving a Will does not ordinarily differ from that of proving any other document except as to the special requirement prescribed in the case of a Will by Sec.63 of the Succession Act. The onus of proving the Will is on the propounder and in the absence of suspicious circumstances surrounding the execution of the Will, proof of testamentary capacity and signature of the testator as required by law is sufficient to discharge the onus. Where, however, there were suspicious circumstances, the onus would be on the propounder to explain them to the satisfaction of the court before the Will could be accepted as genuine. Such suspicious circumstances may be a shaky signature, a feeble mind and unfair and unjust disposal of the property or the propounder himself taking a leading part in the making of the Will under which he receives a substantial benefit. The presence of suspicious circumstances makes the initial onus heavier and the propounder must remove all legitimate suspicion before the document can be accepted as the last Will of the testator. *[Para 3]*

Cases referred to:
S.Venkatachala Iyengar v. B.N.Thirumajamma, A.I.R. 1959 S.C. 443: (1959)1 S.C.R. (Supp.) 426; Rani Purnima Devi v. Kumar Khagendra Narayan Dev, (1962)2 M.L.J. (S.C.) 27: (1962)2 An.W.R. (S.C.) 27: (1962)1 S.C.J. 725: (1962)3 S.C.R. 195: A.I.R. 1962 S.C. 567; Jaswant Kaur v. Amrit Kaur, (1977)1 S.C.R. 925: (1977)1 S.C.C. 369.
R.Satish, for Appellant.
The Judgment of the Court was delivered by
S.C.Agrawal, J.:- The question for consideration in this appeal relates to the genuineness of a Will said to be executed by one Ganga Singh whereby he bequeathed all his property to his distant cousin, Atma Singh, respondent 1, the grandson of the brother of the grandfather of Ganga Singh. Ganga Singh had a brother Ranga Singh and a sister Banti. Both, Ranga Singh and Banti had died during the life time of Ganga Singh. Smt.Guro, the appellant herein, is the daughter of Banti. At the time of his death, on October 10, 1968, Ganga Singh was having one-third share in land measuring 148 kls. 11 mls. in village Dall, Tehsil Patti, District Amritsar. On October 2, 1968, Ganga Singh is said to have executed the Will in question whereby he bequeathed his entire property to respondent 1. After the death of Ganga Singh, proceedings regarding mutation of the lands in his share were initiated and in those proceedings respondent 1 sought mutation in his favour on the basis of the Will. The appellant sought mutation as the nearest heir, being daughter of Ganga Singh's sister. The Assistant Collector, I Grade, Patti sanctioned the mutation in favour of the appellant and did not accept the Will on the ground that it was not beyond suspicion. Thereafter respondent 1 filed a suit for declaration wherein he claimed one-third share of Ganga Singh on the basis of the Will dated October 2, 1968. The said suit was contested by the appellant who disputed the genuineness of the Will. Respondent 1 did not accept the claim of the appellant and disputed that she is the daughter of the sister of the testator, Ganga Singh. The Sub-Judge, I Class, Patti by his judgment dated July 25, 1972 decreed the said suit of respondent 1 on the view that the execution of the Will by Ganga Singh was duly proved and at the time of the said execution, the testator was in a sound state of mind. The Sub-Judge, however, found that the appellant is the daughter of Ganga Singh's sister Banti. On appeal, the Additional District Judge, Amritsar, by his judgment dated September 22, 1973, reversed the decree of the Sub-Judge and dismissed the suit of respondent 1, and found that the Will was not proved to be a genuine document executed by Ganga Singh inasmuch as there were certain features which threw suspicion with regard to its valid execution. The High Court of Punjab and Haryana, by judgment dated October 28, 1982, allowed the second appeal filed by respondent 1 and while setting aside the judgment and decree of the appellate court, restored the judgment of the trial court on the view that the Will had been validly executed. Feeling aggrieved by the said decision of the High Court, the appellant has filed this appeal.

2. In the Will, the testator, Ganga Singh has stated that he had no issue nor he had any sister and that he had one brother who also died and he is the owner of the property and the land situated in village Dall. The testator has further stated that he has been ill for a long time and has become blind and was now seriously ill and there is no hope for his survival. He has further stated that after his death, Atma Singh, son of Mangal Singh, son of Bahadur Singh would be owner of his property because he was his real brother and he would be really entitled. The scribe of the Will was Manohar Lal, a shopkeeper in Dall, and there is thumb impression of the testator. It has been attested by five persons, namely, Kehar Singh, Sarpanch Lambardar, Dall, Surjan Singh, Chanan Singh, Sardara Singh and Hazara Singh. In order to prove the Will respondent 1 examined the scribe Manohar Lal (P.W.1) and two attesting witnesses Kehar Singh (P.W.2) and Surjan Singh (P.W.3).

3. With regard to proof of a Will, the law is well-settled that the mode of proving a Will does not ordinarily differ from that of proving any other document except as to the special requirement prescribed in the case of a Will by Sec.63 of the Indian Succession Act. The onus of proving the Will is on the propounder and in the absence of suspicious circumstances surrounding the execution of the Will, proof of testamentary capacity and signature of the testator as required by law is sufficient to discharge the onus. Where, however, there were suspicious circumstances, the onus would be on the propounder to explain them to the satisfaction of the Court before the Will could be accepted as genuine. Such suspicious circumstances may be a shaky signature, a feeble mind and unfair and unjust disposal of the property or the propounder himself taking a leading part in the making of the Will under which he receives a substantial benefit. The presence of suspicious circumstances makes the initial onus heavier and the propounder must remove all legitimate suspicion before the document can be accepted as the last Will of the testator. *S. Venkatachala Iyengar v. B.N.Thimmajamma, A.I.R. 1959 S.C. 443: (1959)1 S.C.R. (Supp.) 426, Rani Purnima Devi v. Kumar Khagendra Narayan Dev, (1962)2 M.L.J. (S.C.) 27: (1962)2 An.W.R. (S.C.) 27: (1962)1 S.C.J. 725: (1962)3 S.C.R. 195: A.I.R. 1962 S.C. 567, Jaswant Kaur v. Amrit Kaur, (1977)1 S.C.R. 925: (1977)1 S.C.C. 369.*

4. In the instant case, the appellate court noticed the following suspicious circumstances:

(1) The Will mentions that the testator had been ill for a long time and was seriously ill at the time of execution of the Will.

(2) While mentioning that he had one brother who had died, the testator has stated that he did not have any sister, which was not correct.

(3) Respondent 1, Atma Singh, the sole legatee, has been wrongly described as the real brother of the testator.

(4) No reasons are mentioned in the Will why the appellant, who was the natural heir of the testator was being ignored.

(5) Although the testator was literate, the Will does not bear his signatures and bears his thumb impression.

(6) The Will is an unregistered document not scribed by a regular deed writer and as such could be prepared at any time.

(7) The Will was executed on October 2, 1968 and within eight days of the execution of the Will the testator died on October 10, 1968.

5. The appellate court has found that respondent 1 had made contradictory statements with respect to his presence at the time of the execution of the Will and that in his testimony he claimed that he was not present at the time of the execution of the Will but in his statement before the revenue authorities in the mutation proceedings, respondent 1 had stated that the Will was executed in his presence and was thumb marked by Ganga Singh and when confronted with the said statement, respondent 1 did not deny the correctness of the record prepared but tried to explain his earlier statement by stating that what he meant was that he had been informed by Ganga Singh about the execution of the Will. The appellate court also found that the scribe. Manohar Lal had made contradictory statements about the illness of Ganga Singh and that he first stated that Ganga Singh was not ill at the time of the execution of the Will and had subsequently fallen ill and died of that illness but on further cross-examination, he stated that Ganga Singh had been lying ill since two years prior to the execution of the Will. The appellate court has pointed out that Kehar Singh and respondent 1. Atma Singh had contradicted the recital in the Will with respect to the illness of Ganga Singh and have stated that he fell ill 7 or

8/10 days prior to his death. The appellate court was of the view that the recital in the Will to the effect that Ganga Singh had been ill since long leads to the conclusion that due to that illness Ganga Singh was of feeble mind and it was, therefore necessary the plaintiff-respondent to prove that advice for ignoring the natural heir was available to Ganga Singh and the Will was not the outcome of any undue influence on the part of the plaintiff who was the sole legatee. Keeping in view the aforesaid circumstances, the appellant court held that the Will was not proved to be genuine document executed by Ganga Singh.

6. The High Court, in second appeal, reversed the findings recorded by the appellate court and held that the incorrect statements in the Will with regard to testator having no sister and respondent 1 being his real brother could not cast any doubt on the contents of those parts of the Will by which specified property was bequeathed to the legatee and the legatee could not be made to suffer by some untruthfulness on the part of the testator. As regards the thumb impression instead of signatures of the testator on the Will, the High Court observed that the extent of literacy of the testator is not apparent from the record and that it was not the case of the appellant that the thumb impression on the Will had been obtained after the testator had actually died and there is no evidence to show that he was not in his senses when the scribe asked him to put his thumb impression on the Will. As regards the contradictory statements made by respondent 1 about his presence at the time of execution of the Will, the High Court observed that this lapse on the part of respondent 1 may be due to faulty memory or maybe he was trying to avoid a criticism that he had tried to exercise some influence in getting the Will executed in his favour.

7. The High Court, in our opinion, was not justified in reversing the findings of fact recorded by the appellate court which were based on a proper appreciation of the evidence on record. In doing so, the High Court has failed to attach sufficient importance to the various suspicious features relating to execution of the Will that were pointed out by the appellate court. The High Court has not even noticed the fact that the testator had died within eight days of the execution of the Will and there is a recital in the Will that the testator had been ill for a long time and was seriously ill at the time of execution of the Will. In view of the said recital, it was necessary for the plaintiff-respondent 1 to adduce satisfactory evidence with regard to the nature of the illness of the testator and about his mental capacity to execute the Will. The incorrect statements in the Will with regard to testator having no sister and respondent 1 being his real brother have to be considered in this background. The circumstance that the testator had not put his signature and had put only his thumb impression on the Will, has been brushed aside by the High Court on the view that there is no evidence on record with regard to the literacy of the testator. We find that the scribe, Manohar Lal, P.W.1, has stated that Ganga Singh was literate person and had been writing receipts etc. even earlier. In the circumstances, it was necessary for the plaintiff-respondent to adduce satisfactory evidence to show why, instead of signatures, the thumb impression of the testator was obtained on the Will. Another significant feature which has been brushed aside by the High Court is about the role of respondent 1 in the execution of the Will under which he is the sole legatee. It has been stated by Manohar Lal, P.W.1, that Tara Singh, the son of respondent 1 had come to call him. To the same effect is the testimony of Kehar Singh, P.W.2 and Surjan Singh, P.W.3, the attesting witnesses. The Will was executed outside the residence of respondent 1 on a bahi brought by Tara Singh the son of respondent 1. Respondent 1 has made contradictory statements about his presence at the time of the Will. The High Court has ignored these contradictions in the statement of respondent 1, by a simple observation that this lapse on the part of respondent 1 may be due to faulty memory or maybe he was trying to avoid the criticism that he has tried to exercise some influence to get the Will executed in his favour. Only two of the five attesting witnesses have been examined. Both of them, *viz.*, Kehar Singh (P.W.2) and Surjan Singh (P.W.3) have made an effort to deny the illness of the testator at the time of the execution of the Will and have also departed from their earlier statements recorded during the mutation proceedings. in these circumstances, it was necessary that the other attesting witnesses should also have been examined by plaintiff-respondent 1. Taking into consideration the aforesaid features, we are of the view that the High Court was not justified in reversing the findings of fact recorded

by the appellate court that Will is not proved to be a genuine document executed by Ganga Singh and in holding that the execution of the Will had been satisfactorily proved by respondent 1.'

8. The appeal is, therefore, allowed. The judgment and decree of the High Court of Punjab and Haryana dated October 28, 1982 in Regular Second Appeal No.1504 of 1973 is set aside and judgment and decree of the Additional District Judge, Amritsar dated September 22, 1973 dismissing the suit of respondent 1 are restored. There will be no order as to costs.

B.S. ---- *Appeal allowed.*

IN THE SUPREME COURT OF INDIA.

Present:- *M.Fathima Beevi* and *S.C.Agrawal, JJ.*

C.A.No.3570 of 1991 *4th March, 1992.*

Ramesh Hirachand Kundanmal ...*Appellant*
v.
Municipal Corporation of Greater Bombay and others ...*Respondents.*

Civil Procedure Code (V of 1908), O.1, Rule 10(2) - Object and scope of - Necessary party - Who is - Municipality issuing notice to plaintiff to demolish unauthorised construction of two Chattels - Structure itself leased out to plaintiff by lessor - Lessor if a necessary party to suit by plaintiff against Municipality challenging validity of notice.

Held:- It cannot be said that the main object of the Rules 10(2), of O.1, C.P.C. is to prevent multiplicity of actions though it may incidentally have that effect. But that appears to be a desirable consequence of the rule rather than its main objective. The person to be joined must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some question involved and has thought of relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary that the person must be directly or legally interested in the action in the answer, *i.e.* he can say that the litigation may lead to a result which will affect him legally that is by curtailing his legal rights. It is difficult to say that the rule contemplates joining as a defendant a person whose only object is to prosecute his own cause of action. *[Para 14]*

The courts below have assumed that the subject-matter of the litigation is the structure erected by the respondent or in other words, the service station which has been allowed to be operated upon by the plaintiff under the terms of the dealership agreement. The notice does not relate to that structure but is in relation to the two chattels stated to have been erected by the present plaintiff unauthorisedly. According to the appellant these chattels/structures are movables on wheels and plates where servicing and/or repairs are done and used for storing implements of the machanics. Respondent 2 has no interest in these chattels and the demolition of the same in pursuance to the notice is not a matter which affects the legal rights of the respondent. The court below, therefore, failed to note that respondent 2 has no direct interest in the subject-matter of the litigation and the addition of the respondent would result in causing serious prejudice to the appellant and the substitution or the addition of a new cause of action would only widen the issue which is required to be adjudicated and settled. The joining of the party would embarrass the plaintiff and issues not germane to the suit would be required to be raised. The mere fact that a fresh litigation can be avoided is no ground to invoke the power under the rule in such cases. *[Para 18]*

Cases referred to:

Razia Begum v. Anwar Begum, A.I.R. 1958 S.C. 886: 1959 S.C.R. 1111; Dollfus Mieg et Compagnie S.A. v. Bank of England, (1950)2 All E.R. 605; Amon v. Raphael Tuck & Sons Ltd., (1956)1 All E.R. 273: (1956)1 Q.B. 357; National Textiles Workers Union v. P.R.Ramakrishnan, A.I.R. 1983 S.C. 759: 1983 Crl.L.J. 1102: (1983)1 S.C.C. 105: 1983 S.C.C. (Crl.) 572: (1983)2 S.C.W.R. 269.

K.Parasaran, Senior Advocate (*Joquim Reis* and *Kailash Vasdev*, Advocates with him), for Appellant.

D.N.Mishra (for *J.B.D. & Co.*) and *M.S.Ganesh*, for Respondents.

The Judgment of the Court was delivered by

Fathima Beevi, J.:- We have to consider in this appeal the question whether respondent 2 is a necessary or proper party to be joined as defendant under O.1, Rule 10 of the C.P.C., in the suit instituted by the appellate against respondent 1.

2. Under the Dealership Agreement of 1974, the appellant is in possession of the service station erected on the land held by respondent 2 herein, the Hindustan Petroleum Corporation Limited as lessee. The service station consists of a petrol pump in the ground floor and a structure with an open terrace for parking of vehicles. Respondent 1, the Municipal Corporation of Greater Bombay issued notice dated August 5, 1988 under Sec.351 of the Municipal Corporation Act to the appellant for demolition of two chattels on the terrace on the ground that these were unauthorised constructions. The appellant instituted the Suit No.6181 of 1988 before the City Civil Court, Bombay, challenging the validity of the notice and for injunction restraining the Municipal Corporation from demolishing the structures. Interim injunction was granted by the court.

3. On September 9, 1988 respondent 2 applied for being impleaded as additional defendant in the suit on the ground that they have materials to show that the constructions are unauthorised, and they are necessary parties to the litigation. The court by order dated August 22, 1989 directed the appellant to add respondent 2 as defendant and amend the plaint suitably rejecting the contentions of the appellant that respondent 2 was neither a necessary nor a proper party to be impleaded in the suit. The appellant filed W.P.No.4229 of 1989 under Art.227 of the Constitution of India in the High Court of Bombay challenging the correctness of the order. The High Court by the impugned judgment dismissed the writ petition. This appeal by special leave is directed against the judgment of the High Court dated October 13, 1989.

4. Three grounds have been urged by the learned counsel for the appellant against the sustainability of the order. The plaintiff was *dominus litis* and; therefore, cannot be forced to join respondent 2 as defendant. Respondent 2 is neither a necessary nor a proper party to the suit. The addition of the respondent would enlarge the issue in the suit. Reliance was placed on the decision of this Court in *Razia Begum v. Anwar Begum, A.I.R. 1958 S.C. 886: 1959 S.C.R. 1111.*

5. It was argued that the court cannot direct addition of parties against the wishes of the plaintiff who cannot be compelled to proceed against a person against whom he does not claim any relief. Plaintiff is no doubt *dominus litis* and is not bound to sue every possible adverse claimant in the same suit. He may choose to implead only those persons as defendants against whom he wishes to proceed though under O.1, Rule 3, to avoid multiplicity of suit and needless expenses all persons against whom the right to relief is alleged to exist may be joined as defendants. However, the court may at any stage of the suit direct addition of parties. A party can be joined as defendant even though the plaintiff does not think that he has any cause of action against him. Rule 10 specifically provides that it is open to the court to add at any stage of the suit a necessary party or a person whose presence before the court may be necessary in order to enable the court to effectually and completely adjudicate upon and settle all the questions involved in the suit.

6. Sub-rule (2) of Rule 10 gives a wide discretion to the court to meet every case of defect of parties and is not affected by the inaction of the plaintiff to bring the necessary parties on record. The question of impleadment of a party has to be decided on the touchstone of O.1, Rule 10 which provides that only a necessary or a proper party may be added. A necessary party is one without whom no order can be made effectively. A proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding. The addition of parties is generally not a question of initial jurisdiction of the Court, but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case.

7. The respondents do not seriously dispute the position that the respondent 2 is not a necessary party to the suit in the sense that without their presence an effective order cannot be passed. However, they support the view that respondent 2 is a proper party whose presence is necessary for a

complete adjudication on the controversy. In the light of the clear language of the rule, it is not open to the appellant to contend that a person cannot be added as defendant even in a case where his presence is necessary to enable the court to decide the matter effectively.

8. The case really turns on the true construction of the rule in particular the meaning of the words "whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit". The court is empowered to join a person whose presence is necessary for the prescribed purpose and cannot under the rule direct the addition of a person whose presence is not necessary for that purpose. If the intervener has a cause of action against the plaintiff relating to the subject matter of the existing action, the court has power to join the intervener so as to give effect to the primary object of the order which is to avoid multiplicity of actions.

9. In the present case, the subject matter of the dispute between the appellant and respondent 1 is the demolition of the unauthorised construction in pursuance to the notice under Sec.351 of the Bombay Municipal Act. Respondent 2, the lessee, in possession of the service station asserts that the appellant has made an unauthorised construction and respondent 2 is in possession of material evidence to that effect. No notice has been issued to respondent 2 by the Municipal Corporation and no case of any collusion between the appellant and the Municipal Corporation is alleged. On the other hand, it is the case of the appellant that respondent 2 is instrumental in the initiation of the proceedings by the Municipal Corporation against the appellant and the present application is for collateral purposes. In the light of such averments, it has to be considered whether respondent 2 is a necessary or proper party in the present action.

10. The power of the court to add parties under O.1, Rule 10, C.P.C., came up for consideration before this Court in *Razia Begum v. Anwar Begum, A.I.R. 1958 S.C. 886: 1959 S.C.R. 1111*. In that case it was pointed out that the courts in India have not treated the matter of addition of parties as raising any question of the initial jurisdiction of the court and that it is firmly established as a result of judicial decisions that in order that a person may be added as a party to a suit, he should have a direct interest in the subject matter of the litigation whether it be the questions relating to movable or immovable property.

11. In that case the appellant instituted a case against respondent 3 *inter alia* for a declaration that she was his lawfully married wife. Respondent 3 filed his written statement admitting the claim but on the same date respondents 1 and 2 made an application under O.1, Rule 10(2), C.P.C., for being impleaded in the suit as defendants on the grounds that they were respectively the wife and son of respondent 3 and that they were interested in denying the appellant's status as wife and the status of children as the legitimate children of respondent 3; that the suit was the result of the collusion between the appellant and respondent 3 and that if the appellant was declared to be lawfully wedded to respondent 3, the rights and interests of respondents 1 and 2 in the estate of respondent 3 would be affected. The application was contested by both the appellant and respondent 3. The trial court allowed the application and the order was confirmed by the High Court in its revisional jurisdiction. The question in the appeal before this Court was whether the lower court did not exceed their powers in directing the addition of respondents 1 and 2 as parties defendants in the action.

12. Sinha, J. speaking for the majority said that a declaratory judgment in respect of a disputed status will be binding not only upon parties actually before the court, but also upon persons claiming through them respectively. The court laid down the law that in a suit relating to property in order that a person may be added as a party, he should have a direct interest as distinguished from a commercial interest in the subject-matter of the litigation. Where the subject-matter of a litigation is a declaration as regards status or a legal character, the rule of present or direct interest may be relaxed in a suitable case where the court is of the opinion that by adding that party it would be in a better position effectually and completely to adjudicate upon the controversy. In cases covered by the statutory provisions of Secs.42 and 43 of the Specific Relief Act, the court is not bound to grant the declaration prayed for on a mere admission of the claim by the defendant. If the court has reasons to insist upon a clear proof apart from the admission, the result of a declaratory decree on the

question of status such as the controversy in that suit affects not only the parties actually before the court, but generations to come and in view of that consideration, the rule of present interest as evolved by case law relating to disputes about property does not apply with full force. Applying the propositions enunciated to the facts of the case, the court came to the conclusion that the courts below did not exceed their power in directing the addition of respondents 1 and 2 as parties defendants in the action nor it could be said that the exercise of the discretion was not sound.

13. A clear distinction has been drawn between suits relating to property and those in which the subject-matter of litigation is a declaration as regards status or legal character. In the former category, the rule of present interest as distinguished from the commercial interest is required to be shown before a person may be added as a party.

14. It cannot be said that the main object of the rule is to prevent multiplicity of actions though it may incidentally have that effect. But that appears to be a desirable consequence of the rule rather than its main objective. The person to be joined must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some question involved and has thought of relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary that the person must be directly or legally interested in the action in the answer, *i.e.* he can say that the litigation may lead to a result which will affect him legally that is by curtailing his legal rights. It is difficult to say that the rule contemplates joining as a defendant a person whose only object is to prosecute his own cause of action. Similar provision was considered in *Amon v. Raphael Tuck & Sons Ltd., (1956)1 All E.R. 273: (1956)1 Q.B. 357*, wherein after quoting the observations of Wynn-Parry, J. in *Dollfus Mieg et Compagnie S.A. v. Bank of England, (1950)2 All E.R. 605, 611* that their true test lies not so much in an analysis of what are the constituents of the applicants' rights, but rather in what would be the result on the subject matter of the action if those rights could be established, Devlin, J. has stated:

"The test is 'May the order for which the plaintiff is asking directly affect the intervener in the enjoyment of his legal rights."

15. It has been strenuously contended before us that respondent 2 has no interest in the subject matter of the litigation and the presence of the respondent is not required to adjudicate upon the issue involved in the suit or for the purpose of deciding the real matter involved. It is pointed out that the subject matter in the suit is the notice issued by the Municipal Corporation to the appellant and the issue is whether it is justified or not. The Hindustan Petroleum Corporation Ltd., is interested in supporting the Municipal Corporation and sustaining the action taken against the appellant. But that does not amount to any legal interest in the subject matter in the sense that the order, if any, either in favour of the appellant or against the appellant would be binding on this respondent. It is true that being lessee of the premises, the Hindustan Petroleum Corporation Ltd., has an answer for the action proposed by the Municipal Corporation against the appellant, but for the purpose of granting the relief sought for by the appellant by examining the justification of the notice issued by the Municipal Corporation, it is not necessary for the court to consider that answer. If that be so, the presence of the respondent cannot be considered as necessary for the purpose of enabling the court to effectually and completely adjudicate upon and settle all the questions involved in the suit. The appellant is proceeded against by the Municipal Corporation for the alleged action in violation of the municipal laws. The grievance of the respondent against the appellant, if any, could only be for violation of the agreement and that is based on a different cause of action. The consolidation of these two in the same suit is neither contemplated nor permissible.

16. The learned counsel for the respondent on a reference to the broad principles laid down in *National Textiles Workers' Union v. P.R.Ramakrishnan, A.I.R. 1983 S.C. 759: 1983 Crl.L.J. 1102: (1983)1 S.C.C. 105: 1983 S.C.C.*

(Crl.) 572: (1983)2 S.C.W.R. 269, maintained that respondent 2 has a right to be heard in the suit filed by the appellant against the Municipal Corporation inasmuch as the respondent is the lessee who is not answerable for the illegal actions of the appellant. It was held in that case that the workers of a company are entitled to appear at the hearing of the winding up petition whether to support or oppose it. The Court considered wider public interest involved and said that in winding up of a company or changing its management, the court must take into consideration not only the interest of the shareholders, creditors but also amongst other things the interest of the workers and that the workers must have an opportunity of being heard for projecting and safeguarding their interest before a winding up order is made by the court. That principle has no application in a civil litigation where licensee questions the action of the legal authority and the lessee would not be affected in whatever way the decision is rendered.

17. The City Civil Judge in para 32 of the order said that the Hindustan Petroleum Corporation Ltd., are the lessees of the plot as also the premises, the plaintiff is merely their dealer; they have a right, title and interest in the suit premises and the applicants are proper and necessary parties as they have interest in the subject matter of the litigation and their presence will be necessary and proper to effectively adjudicate upon and determine the cause of action in the suit. The High Court also in confirming the order said that the notice which is challenged is in respect of structure which belongs to respondent 2 and the respondent's presence is necessary for effective adjudication.

18. The courts below have assumed that the subject-matter of the litigation is the structure erected by the respondent or in other words the service station which has been allowed to be operated upon by the plaintiff under the terms of the dealership agreement. The notice does not relate to that structure but is in relation to the two chattels stated to have been erected by the present appellant unauthorisedly. According to the appellant these chattels/structures are movables on wheels and plates where servicing and/or repairs are done and used for storing implements of the mechanics. Respondent 2 has no interest in these chattels and the demolition of the same in pursuance to the notice is not a matter which affects the legal rights of the respondent. The court below, therefore, failed to note that respondent 2 has no direct interest in the subject-matter of the litigation and the addition of the respondent would result in causing serious prejudice to the appellant and the substitution or the addition of a new cause of action would only widen the issue which is required to be adjudicated and settled. The joining of the party would embarrass the plaintiff and issues not germane to the suit would be required to be raised. The mere fact that a fresh litigation can be avoided is no ground to invoke the power under the rule in such cases.

19. We are, therefore, of the view that the courts below were wrong in concluding that respondent 2 is a necessary or a proper party to be added as a defendant in the present suit instituted by the appellant.

20. We accordingly allow the appeal and set aside the impugned judgment.

B.S. ---- *Appeal allowed.*

IN THE SUPREME COURT OF INDIA.

Present:- *N.M.Kasliwal* and *M.M.Punchhi, JJ.*

C.A.No.706 of 1975 *15th May, 1992.*

Mir Fazeelath Hussain and others ...*Appellants*

v.

Special Deputy Collector, Land Acquisition, Hyderabad ...*Respondent.*

(A) Land Acquisition Act (I of 1894), Secs.23(2) and 28 (as amended by Act (LXVIII of 1984) - Award of solatium and award of interest on the amount of compensation - Distinction between.

There is a slight distinction in the case of award of solatium and the award of interest on the amount of compensation. The solatium is given on account of compulsory acquisition while the interest is awarded to compensate the delayed payment of the amount of compensation to which the claimant becomes entitled as soon as possession is taken from him till the payment is made in the court. Thus so far as the grant of solatium for

compulsory nature of the acquisition is concerned, it comes into operation on the date when the award is given by the Collector or the court and the rate of solatium would be governed according to the rate prevailing on the date of award made by the Collector or the court. But so far as the payment of compensation is concerned, the grievance continues till the entire amount is paid to the claimant. *[Para 14]*

(B) Land Acquisition Act (I of 1894), Sec.28 (as amended by Act LXVIII of 1984) - Enhanced rate of interest - Collector giving award on June 10, 1968 - Court giving award on August 30, 1972 - High Court deciding appeal on June 24, 1974 - Rate of interest which can be allowed.

Per Kasliwal, J.:- The claimants would be entitled to interest on the enhanced amount of compensation at the rate of 6 per centum per annum from June 24, 1968 the date of taking possession upto September 23, 1984 and at 9 per centum per annum from September 24, 1984 till the payment of such amount in the court. As the provision of granting interest at the rate of 15 per centum per annum after the date of expiry of period of one year from the date on which possession is taken cannot be applied in terms and the amount of compensation has been enhanced now by this Court and the State had no opportunity to make the payment earlier, it is deemed proper to grant reasonable time to the State after which it may be liable to pay interest at 15 per centum per annum. Thus, it is directed that if such amount is not paid within three months from the date of this order, the claimants would be entitled to interest at the rate of 15 per centum per annum on such amount from the date of this order. *[Para 15]*

Per Punchhi, J.: (Partly dissenting:) The amended Sec.28 cannot come to the aid of the claimants-appellants so as to entitle item 9 per centum interest in the first year and 15 per centum interest thereafter till payment in court. The interpretation of the provision or its harmonizing cannot be so elastic or so to such length so as to violate its clear intendment in the drive to do 'complete justice' or to meet 'the ends of justice'. It is true though that the Constitution Bench in *Union of India v. Raghubir Singh, (1989)2 S.C.C. 754,* was only required to interpret the relevant provisions of the Land Acquisition Act as amended in the year 1984 in regard to the rate of solatium but the expression 'any such award' was interpreted in the context to exclude the benefit of enhanced solatium at the appellate level of the High Court or the Supreme Court unless the appeal arose against an award of the Collector or of the Court of a District Judge rendered between April 30, 1982 and September 24, 1984. Here instantly neither the award of the Collector nor the award of that court came within the two crucial dates. Rather the reference was decided by the court on August 30, 1972 much before the amendment and the appeal before the High Court too was decided on June 24, 1974 much before the amendment. The High Court at its level and the court as the last appellate, are courts of correction and in the exercise of the appellate jurisdiction are empowered to correct the award of the District Judge, as if the decision made by it would have been the award of the District Judge. The interpretation of the expression 'any such award' can have no two meanings, one towards the award of interest and the other towards solatium. Whatever be the intrinsic quality of payment on account of solatium and contrasting by that of the interest payable, claims to both arise from the date of taking possession till the payment is made in court. If the governing rate of solatium would be that prevailing on the date of the award made by the Collector or the Court, a *fortiorari*, the governing rate of interest would too be the one prevailing on the date of the award made by the collector or the reference court. Inescapably the language of the statute and the spirit mandates so. The Amendment Act of 1984 with effect from September 24, 1984, has enhanced rate of interest from the per centum to 9 per centum and in the given situation at 15 per centum but only to those acquisition which commence from that date and thereafter. The only exception is with regard to those acquisitions which stood initiated and were pending at the stages conceived of by the transitional provisions. Agreeing with Kasliwal, J., on the rate of interest proposed would mean militating against the ratio of the Constitution Bench in *Raghubir Singh's case, (1989)2 S.C.C. 754.* I would order grant of 6 per centum interest on the enhanced compensation to the claimants-appellants from the date of taking possession of the law acquired till payment denying myself the exercise of harmonising these provisions and refraining myself from discovering any hidden meaning when the language of the statute is clear and plain and has been interpreted in

Raghubir Singh's Case, (1989)2 S.C.C. 754. Therefore, right from June 24, 1968, the date of taking possession till payment of such amount is made in court, the claimants-appellants are entitled to 6 per centum as interest. Sequelly, neither the claimants-appellants are entitled to 9 per centum per annum interest from April 24, 1984 till payment of such amount in court nor is any time to be granted to the State to pay it within three months at the pain of being liable to pay interest at 15 per centum per annum after three months. *[Para 17]*

(C) Land Acquisition Act (I of 1894), Sec.23(2) (as amended by Act (LXVIII of 1984) - Land acquisition - Award of Collector given on June 10, 1968 - Award by reference court given on August 30, 1972 - Solatium on enhanced amount of compensation - Rate of.

The claimants in the present case are not entitled to enhanced solatium as the award by the Collector was given on June 10, 1968 and the award by the reference court was also given on August 30, 1972 and will only be entitled to 15 per centum on the enhanced amount of compensation. This is in accordance with the ratio of the decision of the Constitution Bench in *Union of India v. Raghubir Singh, (1989)2 S.C.C 754.* *[Para 15]*

Cases referred to:

Union of India v. Raghubir Singh, (1989)2 S.C.C. 754; K.Kamalajammanniavaru v. Special Land Acquisition Officer, (1985)1 S.C.C. 582; Bhag Singh v. Union Territory of Chandigarh, (1985)3 S.C.C. 737; State of Punjab v. Mohinder Singh, (1986)1 S.C.C. 365.

K.Madhava Reddy, Senior Advocate (*S.Markandeya, G.Seshagiri Rao, K.Purushottam Reddy, K.Prakash Reddy, Ms.Renu Gupta* and *Ms.Chitra Markandeya,* Advocates with him), for Appellants.

C.Sitaramiah, Senior Advocate (*T.V.S.N.Chari* and *Ms.Manjula Gupta,* Advocates with him), for Respondents.

The Judgments of the Court were delivered by

Kasliwal, J.:- This appeal by grant of special leave is directed against the judgment of the Andhra Pradesh High Court dated June 24, 1974. The claimants have filed this appeal praying for raising the compensation of the acquired land at the rate of Rs.5 per sq. yard. The High Court has granted compensation of the acquired land on a beltwise basis with reference to the distance from the Hyderabad Bombay Road in the following manner.

2. Survey Nos.1057, 1058, 1061, 1062 and 1065 (land abutting Hyderabad-Bombay Road) making a total of 100 acres 4 guntas in the first belt, the compensation has been awarded at the rate of Rs.5,000 per acre. As regards Survey Nos.1056, 1059, 1060, 1063 and 1064, total extent of 96 acres 7 guntas in the second belt, compensation awarded at the rate of Rs.4,000 per acre. Survey Nos.1055, 1052, 1051, 1046 and 1045 total extent of 100 acres 9 guntas in the third belt, compensation awarded at the rate of Rs.3,000 per acre. Compensation for Survey Nos.1044, 1047, 1050, 1053 and 1054, total extent of 99 acres 39 guntas, in the fourth belt has been allowed at the rate of Rs.2,000 per acre. Compensation for Survey Nos.1043, 1048 and 1049 to the extent of 47.03 acres in the fifth belt awarded at the rate of Rs.1,000 per acre.

3. Lastly the land in the sixth belt forming a huge block of 661 acres 4 guntas comprising of Survey No.1009, the High Court has awarded the compensation at the rate of Rs.500 per acre as it was a hillock.

4. It has been contended on behalf of the appellants that in respect of land in Survey Nos.1033, 1034 and 1035 which was acquired by the same notification, the compensation was awarded by the High Court at the rate of Rs.1.75 per sq.yard by decision dated September 7, 1973. It has been further submitted that the said judgment of the High Court was affirmed by this Hon'ble Court on September 9, 1974 by dismissing the Special Leave Petition Nos.1689-1690 of 1970 filed by the State Government. It may be noted that in that case the High Court had affirmed the compensation awarded by the District Judge at the rate of Rs.1.75 per sq.yard. It has been contended on behalf of the appellants that there is no distinction with regard to the land in dispute and the land comprised in Survey Nos.1033, 1034 and 1035 and the High Court in the present case committed a mistake in not awarding compensation at least at the rate of Rs.1.75 per sq.yard. We have taken into consideration the entire facts and circumstances of the case. In our view so far as the land comprised in Survey Nos.1057, 1058, 1061, 1062 and 1065, 1056, 1059, 1060, 1063 and 1064, 1055, 1052, 1051, 1046 and 1045 1044, 1047, 1050, 1053 and 1054 falling in the four belts *i.e.* 1, 2, 3 and 4, the compensation ought to have been awarded at the rate of Rs.1.75 per sq.yard uniformly as they are similarly circumstanced as Survey Nos.1033, 1034

and 1035. As regards the land Survey Nos.1043, 1048 and 1049 falling in the fifth belt, in our view reasonable compensation should be Rs.2,000 per acre. As regards the land Survey No.1009 falling in sixth belt measuring 661 acres 4 guntas, it is proved on record that the area consists of hillocks and as such the High Court was correct in awarding the compensation at the rate of Rs.500 per acre and we do not find any valid reason to take a different view in respect of the compensation awarded for this land falling in the sixth belt.

5. After reserving our judgment we thought it necessary to hear further arguments on the question of allowing solatium and interest under the provisions of the Land Acquisition (Amendment) Act, 1984 (hereinafter referred to as the 'Amendment Act, 1984'). Learned counsel for the parties were heard at length.

6. The following question of law was referred for decision to the Constitution Bench of this Court in *Union of India v. Raghubir Singh, (1989)2 S.C.C. 754:*

> "Whether under the Land Acquisition Act, 1894 as amended by the Land Acquisition (Amendment) Act, 1984 the claimants are entitled to solatium at 30 per cent of the market value irrespective of the dates on which the acquisition proceedings were initiated or the dates on which the award had been passed?"

7. The Constitution Bench in the above case held as under:

> "*The question is*: What is the meaning of the words 'or to any order passed by the High Court or Supreme Court on appeal against any such award?' Are they limited, as contended by the appellants, to appeals against an award of the Collector or the Court made between April 30, 1982 and September 24, 1984, or do they include also, as contended by the respondents, appeals disposed of between April 30, 1982 and September 24, 1984 even though arising out of awards of the Collector or the Court made before April 30, 1982. We are of the opinion that the interpretation placed by the appellants should be preferred over that suggested by the respondents. Parliament has identified the appeal before the High Court and the appeal before the Supreme Court by describing it as an appeal against 'any such award'. The submission on behalf of the respondents is that the words 'any such award' mean the award made by the Collector or Court, and carry no greater limiting sense; and that in this context, upon the language of Sec.30(2), the order in appeal is an appellate order made between April 30, 1982 and September 24, 1984 in which case the related award of the Collector or of the Court may have been made before April 30, 1982. To our mind, the words 'any such award' cannot bear the broad meaning suggested by learned counsel for the respondents. No such words of description by way of identifying the appellate order of the High Court or of the Supreme Court were necessary. Plainly, having regard to the existing hierarchical structure of fore contemplated in the parent Act those appellate orders could only be orders arising in appeal against the award of the Collector or of the Court. The words 'any such award' are intended to have deeper significance, and in the context in which those words appear in Sec.30(2) it is clear that they are intended to refer to awards made by the Collector or Court between April 30, 1982 and September 24, 1984. In other words Sec.30(2) of the Amendment Act extends the benefit of the enhanced solatium to cases where the award by the Collector or by the Court is made between April 30, 1982 and September 24, 1984 or to appeals against such awards decided by the High Court and the Supreme Court whether the decisions of the High Court or the Supreme Court are rendered before September 24, 1984 or after that date. All that is material is that the award by the Collector or by the Court should have been between April 30, 1982 and September 24, 1984. We find ourselves in agreement with the conclusion reached by this Court in *K.Kamalajammanniavaru v. Special Land Acquisition Officer, (1985)1 S.C.C. 582* and find ourselves unable to agree with the view taken in *Bhag Singh v. Union Territory of Chandigarh, (1985)3 S.C.C. 737.* The expanded meaning given to Sec.30(2) in the latter case does not, in our opinion, flow reasonably from the language of that sub-section. It seems to us that the learned Judges in that case missed the significance of the word 'such' in the collocation 'any such award' in Sec.30(2). Due significance must be attached to that word, and to our mind it must necessarily intend that the appeal to the High Court or the Supreme Court, in

which the benefit of the enhanced solatium is to be given, must be confined to an appeal against an award of the Collector or of the Court rendered between April 30, 1982 and September 24, 1984."

8. Thus, it was clearly held in the above case that the Amendment Act 1984 extends benefit of the enhanced solatium to cases where the award by the Collector or by the Court is made between April 30, 1982, and September 24, 1984 or to appeals against such awards decided by the High Court or the Supreme Court whether the decisions of the High Court or the Supreme Court are rendered before September 24, 1984 or after that date. The view taken in *Bhag Singh v. Union Territory of Chandigarh, (1985)3 S.C.C. 737,* as well as *State of Punjab v. Mohinder Singh, (1986)1 S.C.C. 365,* was overruled and preferred the view taken in *K.Kamalajammanniavaru v. Special Land Acquisition Officer, (1985)1 S.C.C. 582.*

9. In the case in hand before us the Collector gave the award on June 10, 1968, the Court (Chief Judge, City Civil Court) gave the award on August 30, 1972, and the High Court decided the appeal on June 24, 1974. Thus the claimants/appellants are entitled to solatium at the rate of 15 per cent only on the enhanced amount of compensation.

10. Now so far as the question of interest is concerned, Sec.28 of the Amendment Act, 1984 provides for payment of interest on excess compensation. Sec.28 as originally stood in the Act allowed interest at the rate of 6 per centum per annum from the date of taking possession of the land till the date of payment of excess amount into court. The following amendment of Sec.28 was inserted by Sec.18 of the Amendment Act, 1984:

"18. *Amendment of Sec.28:-* In Sec.28 of the principal Act,--

"(a) for the words 'six per centum', the words 'nine per centum' shall be substituted;

(b) the following proviso shall be inserted at the end, namely--

'Provided that the award of the court may also direct that where such excess or any part thereof is paid into court after the date of expiry of a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of such excess or part thereof which has not been paid into court before the date of such expiry."

11. Sec.30 of the Amendment Act, 1984 provided for transitional provisions and sub-sec.(2) which dealt with Sec.28 of the principal Act is reproduced as under:

"(2) The provisions of sub-sec.(2) of Sec.23 and Sec.28 of the principal Act, as amended by clause (b) of Sec.15 and Sec.18 of this Act respectively, shall apply, and shall be deemed to have applied, also to, and in relation to, any award made by the Collector or Court or to any order passed by the High Court or Supreme Court in appeal against any such award under the provisions of the principal Act after the 30th day of April, 1982 [the date of introduction of the Land Acquisition (Amendment) Bill, 1982, in the House of the People] and before the commencement of this Act.

12. It has been contended on behalf of the claimants/appellants that they are not claiming the enhanced rate of interest retrospectively, but they are claiming the enhanced rate of interest on the enhanced amount of compensation which is now allowed by this Court. Learned counsel submits that transitional provisions contained in Sec.30(2) of the Amendment Act, 1984 do not apply to the enhanced amount of compensation allowed for the first time by this Court. It has been submitted that the case *Union of India v. Raghubir Singh, (1989)2 S.C.C. 754,* decided by the Constitution Bench dealt with the question of solatium only and not with the question of interest on the enhanced amount of compensation. It has been further argued that once this Hon'ble Court decides that the claimants were entitled to enhanced compensation and the possession of the land having already been taken back as on June 24, 1968, the claimants are entitled to enhanced rate of interest on the enhanced amount of compensation with effect from June 24, 1968.

13. On the other hand, it has been contended on behalf of the respondent that the reasoning as given for the enhanced solatium by the Constitution Bench in the case of *Union of India v. Raghubir Singh, (1989)2 S.C.C. 754,* shall also apply to the case of enhanced rate of interest also. It has been submitted that legislature by introducing special provisions by the Amendment Act, 1984 for the benefit of the claimants, clearly laid down in Sec.30 of the transitional provisions that such benefit would be available only in case of such awards

made by the Collector or Court or to any order passed by the High Court or Supreme Court in appeal against any such award between the 30th day of April, 1982 and the commencement of the Act *i.e.* September 24, 1984. It is, thus, contended that in the present case the award was given on June 10, 1968 and the reference court gave the award on August 30, 1972 as such no benefit of the enhanced rate of interest introduced by the Amendment Act of 1984 can be given to the claimants.

14. I have given my thoughtful consideration to the arguments advanced by learned counsel for the parties. So far as the case *Union of India v. Raghubir Singh, (1989) 2 S.C.C. 754,* decided by the Constitution Bench is concerned, it dealt with the question of enhanced solatium only and the question of allowing enhanced rate of interest on the enhanced compensation was not considered nor decided in that case. However, the Constitution Bench was dealing with sub-sec.(2) of Sec.30 of the transitional provisions of the Amendment Act, 1984 which dealt with the provisions of Sub-sec.(2) of Sec.23 and Sec.28 of the principal Act as amended by clause (b) of Sec.15 and Sec.18 of the Amendment Act, 1984. sub-sec.(2) of Sec.23 of the principal Act after amendment enhanced the amount of solatium from 15 to 30 per centum and the same reasoning will apply to the provisions of Sec.28 which dealt with the provisions of enhanced rate of interest on the amount of enhanced compensation. However, there is a slight distinction in the case of award of solatium and the award of interest on the amount of compensation. The solatium is given on account of compulsory acquisition while the interest is awarded to compensate the delayed payment of the amount of compensation to which the claimant becomes entitled as soon as possession is taken from him till the payment is made in the court. Thus so far as the grant of solatium for compulsory nature of the acquisition is concerned, it comes into operation on the date when the award is given by the Collector or the court and the rate of solatium would be governed according to the rate prevailing on the date of award made by the Collector or the court. But so far as the payment of compensation is concerned, the grievance continues till the entire amount is paid to the claimant. Now, if we consider the provisions of the Amendment Act, 1984 and the decision of the Constitution Bench in *Union of India v. Raghubir Singh, (1989) 2 S.C.C. 754,* it becomes clear that the benefit of enhanced rate of interest under Sec.28 cannot be given till the coming into force of the Amendment Act, 1984 *i.e.* September 24, 1984. However, if we look to the Statement of Objects and Reasons of the Land Acquisition (Amendment) Act, 1984 (68 of 1984) it mentions that the individual and institutions who are unavoidably to be deprived of their property rights in land need to be adequately compensated for the loss keeping in view the sacrifice they have to make for the larger interest of the community. The legislature by Amendment Act, 1984 which came into force on September 24, 1984 has clearly enhanced the rate of interest from 6 to 9 per centum and further giving power to the court that where such excess or any part thereof is paid into court after the date of expiry of a period of one year from the date on which possession is taken, to allow interest at the rate of 15 per centum per annum payable from the date of expiry of the said period of one year. Even if the provisions of the Amendment Act, 1984 are applied prospectively in respect of enhanced rate of interest, I find no ground or justification not to allow the rate of interest at 9 per centum per annum on or after September 24, 1984.

15. Thus, harmonising these provisions and keeping in view the intention of the legislature in enhancing the rate of interest under the Amendment Act, 1984 and to do complete justice between the parties, I consider that the following direction would be proper to meet the ends of justice. The claimants in the present case are not entitled to enhanced solatium as the award by the Collector was given on June 10, 1968 and the award by the reference court was also given on August 30, 1972 and will only be entitled to 15 per centum on the enhanced amount of compensation. This is in accordance with the ratio of the decision of the Constitution Bench in *Union of India v. Raghubir Singh, (1989) 2 S.C.C. 754.* Now, so far as the rate of interest is concerned, the claimants would be entitled to interest on the enhanced amount of compensation at the rate of 6 per centum per annum from June 24, 1968 the date of taking possession upto September 23, 1984 and at 9 per centum per annum from September 24, 1984 till the payment of such amount in the court. As the provision of granting interest at the rate of 15 per centum per annum after the date of expiry of period of one year from the date on which possession is taken cannot be applied in terms and

the amount of compensation has been enhanced now by this Court and the State had no opportunity to make the payment earlier, I deem it proper to grant reasonable time to the State after which it may be liable to pay interest at 15 per centum per annum. Thus, it is directed that if such amount is not paid within three months from the date of this order, the claimants would be entitled to interest at the rate of 15 per centum per annum on such amount from the date of this order.

16. I, therefore, allow the appeal in part and set aside the order of the High Court grant the enhanced compensation to the appellants and interest as indicated above. In the circumstances of the case, both the parties shall bear their own costs throughout.

17. *Punchhi, J.: (partly dissenting)*: I have gone through the judgment prepared by my learned brother N.M.Kasliwal, J. I agree to the rate of compensation per acre to be awarded for the land acquired. I also agree that the claimants-appellants are entitled to a solatium at the rate of 15 per centum only on the enhanced amount of compensation and not 30 per centum as claimed. I differ, however, with respect to the rate of interest proposed to be given to the claimants-respondents by my learned brother on the compensation being enhanced by us. The amended Sec.28 cannot come to the aid of the claimants-appellants so as to entitle them 9 per centum interest in the first year and 15 per centum interest thereafter till payment in court. The interpretation of the provision or its harmonizing cannot be so elastic or go to such length so as to violate its clear intendment in the drive to 'do complete justice' or to meet 'the ends of justice'. It is true though that the Constitution Bench in *Union of India v. Raghubir Singh, (1989)2 S.C.C. 754,* was only required to interpret the relevant provisions of the Land Acquisition Act as amended in the year 1984 in regard to the rate of solatium but the expression 'any such award' was interpreted in the context to exclude the benefit of enhanced solatium at the appellate level of the High Court or the Supreme Court unless the appeal arose against an award of the Collector or of the Court of a District Judge rendered between April 30, 1982 and September 24, 1984. Here instantly neither the award of the Collector nor the award of that court came within the two crucial dates. Rather the reference was decided by the Court on August 30, 1972 much before the amendment and the appeal before the High Court too was decided on June 24, 1974 much before the amendment. The High Court at its level and this Court as the last appellate, are courts of correction and in the exercise of the appellate jurisdiction are empowered to correct the award of the District Judge, as if the decision made by it would have been the award of the District Judge. The interpretation of the expression 'any such award' can have no two meanings, one towards the award of interest and the other towards solatium. Whatever be the intrinsic quality of payment on account of solatium and contrastingly that of the interest payable, claims to both arise from the date of taking possession till the payment is made in court. If the governing rate of solatium would be that as prevailing on the date of the award made by the Collector or the Court, a *fortiorari*, the governing rate of interest would too be the one prevailing on the date of the award made by the collector or the reference court. Inescapably the language of the statute and the spirit mandates so. The Amendment Act of 1984 with effect from September 24, 1984, has enhanced rate of interest from 6 per centum to 9 per centum and in the given situation at 15 per centum but only to those acquisitions which commence from that date and thereafter. The only exception is with regard to those acquisitions which stood initiated and were pending at the stages conceived of by the transitional provisions. I therefore regret my inability to agree with the views of my learned brother on this aspect. Agreeing with him on the rate of interest proposed would mean militating against the ratio of the Constitution Bench in *Raghubir Singh's case, (1989)2 S.C.C. 754,* and doing violence to the statute. I would rather order grant of 6 per centum interest on the enhanced compensation to the claimants-appellants from the date of taking possession of the land acquired till payment, denying myself the exercise of 'harmonising' these provisions and refraining myself from discovering any hidden meaning when the language of the statute is clear and plain and has been interpreted in *Raghubir Singh's Case, (1989)2 S.C.C. 754.* Therefore, I am of the view that right from June 24, 1968, the date of taking possession till payment of such amount is made in court, the claimants-appellants are entitled to 6 per centum per annum as interest. Sequelly, it is my view that neither the claimants-appellants are entitled to 9 per centum per annum

interest from April 24, 1984 till payment of such amount in court nor is any time to be granted to the State to pay it within three months at the pain of being liable to pay interest at 15 per centum per annum after three months.

18. Therefore, I agree that the appeal be allowed in part and the judgment and order of the High Court be set aside to that extent. The enhanced compensation be granted to the claimants-appellants with 15 per centum solatium and 6 per centum per annum interest as indicated above. I also agree that both the parties shall bear their own costs throughout.

The Court made the following

ORDER: In view of the separate judgments given by us and disagreement on one point, we pass the following order in the appeal.

20. The claimants-appellants would be entitled to enhanced compensation as well as 15 per cent solatium on the total amount of compensation. As regards the interest we both agree that the claimants are entitled to interest at the rate of 6 per centum per annum up to September 23, 1984. However, we are in disagreement with regard to the rate of interest to be allowed at 6 or 9 per centum per annum from September 24, 1984 till the actual payment in the court and also in respect of the direction that if such amount is not paid within three months from the date of this order, the claimants would be entitled to interest at the rate of 6 per centum or 15 per centum per annum.

21. We, therefore, allow this appeal in part and set aside the judgment of the High Curt to the extent of points agreed. As regards the points in disagreement, we request the Hon'ble the Chief Justice to constitute a larger Bench to resolve the conflict. In view of the fact that the point in controversy though short one but is likely to affect large number of cases, we request the Hon'ble Chief Justice to constitute a larger Bench at the earliest.

B.S. ---- *Appeal allowed in part.*

[End of Volume (1992)II M.L.J. (Supreme Court)]